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CLEAN AIR ACT AMENDMENTS

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HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION

P56-80

ON
TITLE II—REFORMULATED GASOLINE PROGRAM

JUNE 7, 1995

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CLEAN AIR ACT AMENDMENTS

Title II—Reformulated Gasoline Program

WEDNESDAY, JUNE 7, 1995

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.**

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Joe Barton (chairman) presiding.

Members present: Representatives Barton, Crapo, Wyden and Waxman.

Staff present: Robert Meyers, majority counsel; Stephen Sayle, majority counsel; Dick Frandsen, minority counsel.

Mr. BARTON. The subcommittee will come to order.

Before I introduce our first witness, I have an opening statement, and I am sure that the ranking minority member, Mr. Wyden, has an opening statement.

Today's hearing is a continuation of the subcommittee's examination of actions by the EPA in implementing the Clean Air Act in a fair and effective manner. It is the sixth in a series of hearings. The primary focus of today's hearing is on the Reformulated Gasoline Program under Title II the Clean Air Act Amendments of 1990.

So far, the subcommittee has examined Employee Commute Options and Inspection and Maintenance programs contained in Title I of the Act. In addition, we have held a hearing on the EPA's implementation of Title V of the Act, which contains provisions respecting operating permits. The Chair's intention is to complete a comprehensive review of all pertinent issues under the entire Act before this year's session is complete.

The Clean Air Act establishes two new fuel-related programs, the clean alternative fuels program and the Reformulated Gasoline Program. The Reformulated Gasoline Program consists of a winter-time program targeted at certain carbon monoxide nonattainment areas and a year round program that focuses on severe ozone nonattainment areas. Although these programs are interrelated, today's hearing will concentrate on the Reformulated Gasoline Program as it applies to ozone nonattainment areas.

Although the RFG program was only fully implemented in January of this year, it seems apparent that many of the concerns raised regarding the program have not materialized. This has to be good news for EPA and the gasoline consumer. For the most part, concerns over supply shortages have not been justified.

On the other hand, I am very concerned that some issues, both new and old, have yet to be resolved by the EPA.

Approximately 1 year ago, this subcommittee under the leadership of the gentleman from Michigan, Congressman Dingell, conducted an oversight hearing on the RFG program. At that hearing, I expressed to Mrs. Nichols my belief that the EPA's decision to create a set-aside for renewable oxygenates was not supportable. I am an engineer by training, but it did not take a legal scholar to determine that there was no justification for the renewable oxygenate set-aside.

So I was not surprised that the United States Court of Appeals recently ruled that EPA lacked authority to promulgate this Renewable Oxygenate Requirement. What did surprise me was EPA's pronouncement this past weekend that the rule is legally sound and defensible. Moreover, EPA announced it will exhaust every legal option in defending it. I am very concerned about the course that EPA is following and I intend this morning to explore in some detail the reasoning behind this decision.

While the Renewable Oxygenate Requirement is an important issue, it is not the subcommittee's only concern. It is my hope that today we can examine several implementation issues, including procedures by which States that have opted into the RFG program may then opt out. I only yesterday had the opportunity to review the recently proposed rule concerning opt out requirements. I will be interested in hearing the comments of today's panelists regarding that proposed rule.

Finally, in addition to implementation problems facing the current RFG program, I am hopeful that this subcommittee can begin looking ahead to the future of the RFG program. The Clean Air Act requires that phase II of this program begin in the year 2000. Because phase II of the program will require further reductions in certain air emissions from RFG, it will require a significant new investment by refineries. While phase II is 5 years away, decisions and investments needed to meet this requirement are being made as early as this year. I am hopeful that today's hearing can highlight potential problems that phase II of this program might generate.

With that, I would recognize the gentleman from Oregon for an opening statement, Mr. Wyden.

Mr. WYDEN. Thank you, Mr. Chairman.

I think that the session you have scheduled today is a useful one and the Minority looks forward to pursuing these important issues with you. The reformulated gas program is one of the most promising strategies for achieving clean air for our citizens to come out of the 1990 Clean Air Act.

Unlike some other programs that this subcommittee has looked at that appear to be subjecting our citizens to bureaucratic water torture, the reformulated gas program seems to be mostly hassle free. By substituting cleaner burning reformulated gas for conventional gas in areas with serious smog problems, this program can achieve emission reductions equivalent to removing 8 million cars from the road.

As an added benefit, RFG produces less toxic emissions than does conventional gas. These attributes can take our country a long

way down the road towards improved air quality and help ensure that residents of smog-plagued communities are going to breathe easier in the next century.

Exposure to smog is especially hazardous to older people, children and individuals suffering from lung disease, but even young healthy adults can experience lung damage if they spend long periods of time breathing smoggy air. Because RFG burns cleaner than does conventional gas, the net result is less smog and other pollutants that cause respiratory problems.

The RFG program has only been operational since January, so it is perhaps too soon to issue a formal evaluation. But the initial reports indicate that RFG is already producing significant health and environmental benefits in a way that is both user friendly and cost-effective. As I mentioned, the program does seem to be relatively hassle-free.

Motorists can fill up their cars at the same service stations that they traditionally have. They can drive their cars the way they usually do and yet they still will be reducing their car's pollution emissions by 15 percent or more.

There have been allegations in a few areas of adverse health effects associated with use of reformulated gas containing the additive MTBE. However, not one of the dozens of health effect studies conducted so far has found exposure to RFG causes any more serious or widespread health problems than does exposure to conventional gas.

Certainly reports of health problems from RFG need to be fully investigated, and vapor recovery systems need to be employed to minimize exposure to fumes from RFG just as would be the case for conventional gas, but it would be a serious mistake in my view to let the relatively small number of negative reports sidetrack a program that has the potential to provide significant health benefits to millions of Americans. That would be a misapplication of the principles of cost benefit analysis that many of my colleagues in the majority have asserted should be an essential precondition for environmental policy-making.

Concerns that RFG would lead to supply disruptions or severe price spikes have also proved to be unfounded. RFG has not been in short supply.

In most areas, the price of RFG is about a nickel higher than is the price of conventional gas. For the average motorist, the added cost of RFG would be about \$20 more per year than would be regular gas.

Given the great potential RFG has to achieve cleaner air and the relatively smooth implementation process to date, one must wonder why EPA wants to continue to tinker with a program that does not appear to be broken. EPA keeps wanting to turn this up-and-coming clean air program into something it really wasn't, a renewable fuels program.

EPA's effort is contrary not only to Congress' clear intent that RFG be fuel neutral, but also to plain common sense. EPA's efforts to promote renewable fuels using RFG may well backfire and this vitally important clean air program could possibly be stalled in litigation if the agency persists in efforts to burden RFG with an ethanol mandate.

I hope that the agency will consider how its ethanol approach could cause the RFG program to veer off course. I look forward to pursuing this and other issues with EPA and industry witnesses as they come forward.

I look forward to working with you, Mr. Chairman, on this matter.

Mr. BARTON. Thank you. Seeing no other members present, we will dispense with opening statements. I think each of you are aware that this subcommittee has the tradition of taking testimony under oath.

Do either of you have a problem with that?

Ms. NICHOLS. No.

Mr. BARTON. You know that you have the right to have counsel advise you during your testimony.

Do either of you so wish that opportunity?

Mr. RIGGS. No.

Ms. NICHOLS. No.

[Witnesses sworn].

Mr. WYDEN. Mr. Chairman, before we begin, I would ask unanimous consent that the statement of the ranking minority member of the full committee, Mr. Dingell, could be inserted in the record at this time.

Mr. BARTON. Without objection.

[The prepared statement of Hon. John D. Dingell follows:]

THE PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

Thank you, Mr. Chairman. I commend you for continuing this Subcommittee's close watch over EPA's implementation of the Clean Air Act. In particular, today's hearing is a timely and useful follow-up to the Subcommittee's June 1994 hearing on reformulated gasoline.

It now appears that the January 1, 1995 implementation came and went without undue disruption, and for that industry and EPA are to be praised. This program, in conjunction with other fuel improvements, has been and will be a success, both in health benefits and in cost-effectiveness. But there are remaining glitches, most notably EPA's ill-fated effort to mandate ethanol use and the continuing problem concerning Venezuelan refiners. I understand that these are not solely EPA's responsibility, but they cannot be solved without a more flexible and practical approach by EPA.

I thank the witnesses for appearing here today and look forward to their testimony.

Mr. BARTON. We will begin with the Assistant Administrator for Air and Radiation at the U.S. Environmental Protection Agency who is becoming a regular before this subcommittee, Hon. Mary Nichols. We will give you 5 minutes to summarize your written statement and then if you need a little more time, I am sure we can arrange that.

TESTIMONY OF MARY D. NICHOLS, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Ms. NICHOLS. Thank you, Mr. Chairman and Mr. Wyden.

I am pleased to be back here to talk about EPA's Reformulated Gasoline Program.

I want to talk about the implementation of the program and to address some of the issues that have been raised about it. The Clean Air Act Amendments of 1990 require reformulated gasoline

in the nine worst smog pollution areas in the country beginning January 1 of this year. Under the law, other ozone nonattainment areas can opt into the Reformulated Gasoline Program by petition of their governor.

Currently, the governors of most States in the Northeast, from Virginia to Maine, have opted into the reform program. In addition, governors of Kentucky and Texas have opted in for some but not all ozone nonattainment areas in their States. At this time, approximately 30 percent of all United States gasoline consumption is cleaner burning reformulated gasoline.

Near the start-up of the program three States requested to opt out certain areas from the Reformulated Gasoline Program. EPA received requests from Pennsylvania, Maine and New York.

This was due to the fact that these areas have not experienced ozone exceedences since the date of their opt-in in late 1991, and perhaps also because of changes in State administrations. The requests from these States came in before the reformulated gasoline was delivered to retail stations in these areas. Rather than force the delivery of RFG where it was not wanted or needed, EPA responded to each governor's request, stating EPA's intention to grant the opt-out.

A stay of the Reformulated Gasoline Program requirements is in effect in these specified areas through July 1, 1995. Administrator Carol Browner signed, on June 2, a proposed rulemaking on the procedures governing future opt-outs. This includes an extension up to the stay. The proposed rule also solicits public comment on EPA's authority to allow opt-in of attainment areas.

We expect this rulemaking to provide a process that will assure that any future opt-outs occur in an orderly manner that fairly balances the interests of the fuels industries and of the State involved.

Reformulated gasoline is one of the most effective programs for reducing ground level ozone and toxic air pollutants in urban areas. Between 1995 and 1999 reformulated gasoline will result in a 15 percent reduction in volatile organic compounds which cause ozone and air toxics. Beginning in the year 2000, a 25 percent reduction in these two classes of pollutants will be realized along with a 5 to 7 percent reduction in oxides of nitrogen.

Reformulated gasoline is the last of several fuel requirements to be implemented under the Clean Air Act by EPA and industry. These programs have introduced cleaner burning fuels and have resulted in large emissions reductions, leading to improved air and health benefits in all of our non-attainment areas.

Ozone damages lung tissue, reduces lung function and sensitizes the lungs to other irritants. Ozone not only affects people with impaired respiratory systems such as asthmatics, but healthy adults and children as well. Motor vehicles including both gasoline and diesel powered vehicles account for roughly 50 percent of the cancer risk associated with exposure to toxics in ambient air.

In general, implementation has gone smoothly. In the vast majority of the States where reformulated gasoline is required, few complaints have been heard. The dire predictions last summer of increases in the gasoline price of 20 to 25 cents percent per gallon never materialized.

Only a few areas experienced price increases higher than the per gallon price increase of up to 5 cents predicted by EPA's economic analysis. Controversy has been noted in a few areas, however, most notably Milwaukee Wisconsin.

In February 1995, residents of Milwaukee began complaining about health problems, fuel economy losses and vehicle and engine performance problems. EPA responded quickly and held a public hearing in Milwaukee on February 20 which was attended by hundreds of people.

After this hearing EPA immediately set up a field office in Milwaukee and worked cooperatively with Wisconsin State officials on several studies, including a fuel economy and a health study. Another study was completed just last week by the State of Wisconsin supported by EPA funding.

This report concludes that the study does not support the conclusion that exposure to reformulated gasoline is associated with widespread or serious acute adverse health effects in Milwaukee. However, gasoline vapors, whether from traditional or reformulated gasoline should be avoided.

Despite the lack of immediate concern EPA is continuing to support research on oxy fuels, including an agreement with the Health Effects Institute, an independent research organization to review all existing health studies of MTBE and other oxygenates and to suggest areas for further research. We are continuing to work with other government agencies, industry, environmental groups and academia to review any existing data concerning the health effects of oxygenated fuels as well as determining what additional testing or research is necessary.

A brochure published by the American Automobile Manufacturers Association, the association that represents the three major U.S. auto companies, said the following about reformulated gasoline: AAMA member companies have performed extensive laboratory, durability and vehicle evaluation tests of gasolines incorporating the changes found in reformulated gasoline. These tests included operation in hot and cold weather and from sea level to high altitude location.

No problems are anticipated even in older vehicles with the use of properly reformulated gasoline provided gasoline is used which meets the original vehicle octane requirements. Also fuel economy is not significantly impacted by the use of reformulated gasoline.

Questions have also been raised about the performance and durability of nonautomotive engines. We had not expected nor have we or the industry been able to document any significant problems with the use of reformulated gasoline in nonautomotive engines such as lawnmowers or chain saws in spite of the complaints attributed to reformulated gasoline used in some areas. We are working with most of the small engine manufacturers and their trade associations, and they agree that reformulated gasoline is not causing problems.

In conclusion, I would like to reiterate that reformulated gasoline is an important Clean Air Act program with significant environmental and health benefits and that the implementation has progressed quite smoothly. Although a few areas have experienced ini-

tial concerns about this new gasoline, those have been addressed quickly and promptly and complaints have largely dissipated.

We continue to work with State and local officials to address any remaining concerns.

Thank you.

[The prepared statement Mary D. Nichols follows:]

STATEMENT OF MARY D. NICHOLS, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to appear here this morning.

I am pleased to talk about EPA's reformulated gasoline (RFG) program. I would like to discuss the implementation of the program and address several of the issues that have been raised about it.

The Clean Air Act Amendments of 1990 require reformulated gasoline in the nine worst smog pollution areas in the country beginning January 1, 1995. Under the law, other ozone nonattainment areas can opt into the reformulated gasoline program by petition of the Governor. Currently, the Governors of most states in the Northeast, from Virginia through Maine, have opted into the reform program. In addition, Governors of Kentucky and Texas have opted in for some, but not all, ozone nonattainment areas in their States. At this time, approximately 30 percent of overall U.S. gasoline consumption is cleaner-burning reformulated gas.

Near the start-up of the program, three states requested to opt-out certain areas from the RFG program. EPA received requests from Pennsylvania, Maine and New York. This was due to the fact that these areas had not experienced ozone exceedences since the date of their opt-in late 1991, and perhaps by the changes in state administrations. The requests from the states came in before RFG was delivered to retail stations in these areas. Rather than force the delivery of RFG, where it was not wanted or needed, EPA responded to each governor's request, stating EPA's intention to grant the opt-out. A stay of the RFG program requirements is in effect in these specified areas through July 1, 1995. Administrator Carol Browner signed, on June 2, a proposed rulemaking on the procedures for future opt-outs. This includes an extension to the stay. The proposed rule also solicits public comment on EPA's authority to allow opt-in of attainment areas. We expect this rulemaking to provide a process that will assure that any future opt-outs occur in an orderly manner that fairly balances the interests of the fuels industry and of the state involved.

Reformulated gasoline is one of the most effective programs for reducing ground-level ozone and toxic air pollutants in urban areas. Between 1995 and 1999, reformulated gasoline will result in a 15 percent reduction in volatile organic compounds, which cause ozone, and air toxics. Beginning in the year 2000, a 25 percent reduction in these two classes of pollutants will be realized, along with a 5-7 percent reduction in oxides of nitrogen or NO_x , another contributor to ozone.

Reformulated gasoline is the last of several fuels requirements to be implemented under the Clean Air Act by EPA and industry. These programs have introduced cleaner-burning fuels and have resulted in large emission reductions, leading to improved air in all of our nonattainment areas. For example, Phase II Reid Vapor Pressure (RVP) control reduced the evaporation rate of gasoline in summer months and resulted in 1.3 million tons reduction of smog precursors per year. More than half these reductions were in nonattainment areas. Later in 1992, the oxygenated fuels program was implemented during the winter carbon monoxide (CO) season in 36 areas, resulting in about 1.8 million tons reduction in CO. An 80 percent reduction in the number of CO exceedences occurred in the first year in those cities. In the Fall of 1993, EPA implemented the low sulfur diesel program that was aimed at reducing levels of particulate exhaust emissions from trucks and buses. This resulted in immediate reductions in harmful particulates from all diesel vehicles on the road.

Ozone damages lung tissue, reduces lung function, and sensitizes the lungs to other irritants. Ozone not only affects people with impaired respiratory systems, such as asthmatics, but healthy adults and children, as well. Exposure to ozone for several hours at relatively low concentrations has been found to reduce lung function in normal, healthy people during exercise. This decrease in lung function generally is accompanied by symptoms including chest pain, coughing, sneezing and pulmonary congestion.

Motor vehicles, including both gasoline and diesel powered, account for roughly 50 percent of the cancer risk associated with exposure to toxics in ambient air. Re-

ducing the total mass of mobile source emissions of toxics (such as, benzene and 1,3-butadiene) through reformulated gasoline will result in fewer cancer incidences from exposure to these hazardous compounds. A number of adverse non-cancer health effects, such as eye, nose, and throat irritation, have also been associated with exposure to elevated levels of these air toxics.

We know that implementation of the RFG program was by far the most significant change in many years to the way the motor vehicle fuels industry operates. EPA has worked closely with fuel providers and a broad spectrum of other interested groups since January, 1991 when the successful regulatory negotiations began which resulted in an historic consensus agreement in August 1991. This consensus agreement was signed by a wide range of interests including the oil industry, the oxygenate industry, vehicle manufacturers, state governments, environmentalists, consumer groups, the Department of Energy and EPA. Since issuance of the rules for reformulated gasoline, EPA has worked closely with the Department of Energy on supply and price issues, and with the states. The fuels industry's participation has been critical to smooth implementation of RFG in the majority of areas and for resolving program implementation issues such as those in Milwaukee, Wisconsin (which I'll discuss in a moment).

In general, implementation has gone smoothly. In the vast majority of the states where reformulated gasoline is required, few complaints have been heard. The dire predictions last summer of increases in the gasoline prices by 20-25 cents per gallon never materialized. Only a few areas experienced price increases higher than the per gallon price increase of up to 5 cents predicted by EPA's economic analysis.

Controversy has been noted in a few areas, most notably Milwaukee, Wisconsin. In February 1995, residents of Milwaukee began complaining about health problems, fuel economy losses and vehicle and engine performance problems. EPA responded quickly and held a public hearing in Milwaukee on February 20 which was attended by hundreds of people. After this hearing, EPA immediately set up a field office in Milwaukee and worked cooperatively with Wisconsin state officials on several studies including a fuel economy and health study. I will describe the results of these studies a little later. The public controversy in Milwaukee has abated and we are continuing to work with the State and others on issues associated with reformulated gasoline.

Following Milwaukee, similar but less widespread concerns arose in Maine. Those concerns involve primarily fuel economy and vehicle/engine performance, with some complaints about health. The Maine Department of Environmental Protection set up two task forces to deal with these issues and has issued reports which I will describe later. Based on these reports and the clean environmental benefits of RFG, the Governor of Maine has recently come out in support of the continued use of RFG.

Now I would like to turn to the questions that have been raised about the use of reformulated gasoline. Most of these concerns have been related to the use of oxygenates as additives, based on the statutory requirement that RFG contain at least two percent oxygen by weight. There are two primary oxygenates used by refiners and blenders in RFG, ethanol and MTBE. To a lesser extent, ETBE is also used. The primary issues are health, vehicle performance and fuel economy.

Let me now address what we know about the health effects of MTBE. Although MTBE was first used in 1979, principally as an octane enhancer and as a replacement for lead, its first widespread use in the oxygenated gasoline program was in Denver in 1988. In 1987, because of this anticipated wider use of MTBE, EPA required industry to conduct long-term animal studies to evaluate any potential chronic health effects of MTBE. Normally, studies of short term or transitory health effects are not conducted because of the difficulties of replicating acute symptoms, like headaches, in animals. Results from these studies have indicated there is no reason to expect that the use of MTBE-oxygenated gasoline will pose a greater public health risk than traditional gasoline.

Concurrent with the start of the federal oxygenated gasoline program in 1992, acute health complaints such as headaches, coughs and nausea surfaced, principally in Alaska, but also in Montana and New Jersey. Similar complaints of such intensity did not arise in any of the seven, pre-1992 oxygenated gasoline programs: Denver, Phoenix, Tucson, Las Vegas, Reno, Albuquerque, and El Paso. EPA reacted quickly to these complaints and, with the cooperation of Alaska, the Centers for Disease Control and the fuels industry, conducted a \$2 million test program. Studies included two human clinical studies and two epidemiological studies which showed none of the effects reported in Alaska. A recent clinical study in Sweden in which humans were exposed to much higher levels of MTBE than U.S. studies also showed no effects. The Swedish study exposed subjects to 180 milligrams per cubic meter, almost five times the "high typical" exposure of 36 milligrams per cubic meter. As

a result, currently, we have no scientifically established explanation for the symptoms reported by some members of the public in these areas. This and other information is contained in a recently published EPA report, "Health Risk Perspectives on Fuel Oxygenates."

Another study was completed just last week by the State of Wisconsin, supported by EPA funding. This report concluded that:

(1) The study does not support the conclusion that exposure to RFG is associated with widespread or serious, acute, adverse health effects in Milwaukee. However, gasoline vapors, whether from traditional or reformulated gasoline, should be avoided.

(2) The study demonstrated that while individuals in the Milwaukee area reported an increased prevalence of symptoms, no such increase was seen in Chicago, a nearby city also using RFG from the same pipeline.

(3) The study found that people in Milwaukee were more likely to report symptoms if they had a cold or flu, smoked cigarettes, or were aware of RFG.

(4) Because of the limitations of the study, it does not rule out subtle effects or the possibility that some individuals may have a greater sensitivity to RFG mixtures.

Another Task Force established by the Governor of Maine to assess the health effects of RFG recently came to several relevant conclusions. The Task Force "identified a sufficient quantity of high quality research information to recommend against banning MTBE RFG because both regular gasoline and ozone represent significant public health hazards and environmental risk to Maine residents." It further concluded that "the use of MTBE RFG in Maine, in combination with Stage II vapor recovery mechanisms at service stations, could be expected to achieve some positive health impacts." It also said that "MTBE RFG appears to represent a reasonable alternative to regular gasoline with a modest potential for long term positive health impacts."

Despite the lack of immediate concern, we are continuing to support research on oxyfuels including an agreement with the Health Effects Institute (HEI), an independent research organization, to review all existing health studies of MTBE and to suggest areas for further research. Their peer review of EPA's inhalation health risk assessment for oxygenated and reformulated gasoline health effects is now underway. Meetings of an expert panel will begin in June and the report on the results will be finalized in the fall.

Additionally, EPA has requested that the White House Office of Science and Technology Policy (OSTP) lead a coordinated federal review of the health and performance issues associated with the use of oxygenated and reformulated gasolines. This interagency group would review the range of scientific and technical issues associated with the RFG and oxygenated gasoline programs, including health effects (and the HEI work), fuel economy, engine performance, and potential groundwater contamination. This analysis would be peer-reviewed by an independent committee under the auspices of the National Research Council (NRC).

We are continuing to work with other government agencies, industry, environmental groups and academia to review any existing data concerning the health effects of oxygenated fuels as well as determining what additional testing or research is necessary.

As part of this continuing process, EPA will work closely with all constituent groups to be sure that the necessary information is being included in this review. This effort is designed to make full use of the extensive expertise in other state and federal agencies.

With regard to vehicle performance and drivability, it would be best to let the auto companies speak for themselves. A brochure published by the American Automobile Manufacturers Association (AAMA), the Association representing the three major U.S. auto companies, said the following about reformulated gasoline:

AAMA member companies have performed extensive laboratory, durability and vehicle validation tests of gasolines incorporating the changes found in reformulated gasoline. These tests included operation in hot and cold weather, and from sea level to high altitude locations. No problems are anticipated, even in older vehicles, with the use of properly reformulated gasoline, provided gasoline is used which meets the original vehicle octane requirements.

Fuel economy is also not significantly impacted by the use of reformulated gasoline. Based on thousands of vehicle tests in laboratories, the auto industry, the oil industry and EPA estimate the use of RFG causes a fuel economy loss of only 2-3 percent. Of course, many factors affect on-road fuel economy, such as, climate, fuel quality, driving habits, road surface, and vehicle maintenance. To address concerns

that laboratories do not mirror the real world, EPA, in conjunction with the State of Wisconsin, performed an in-use fuel economy study in Milwaukee. Eight vehicles of various technologies, ages and mileage, several with over 100,000 miles of use, were driven on a 100 mile course in the city and the suburbs and fueled with both reformulated and conventional fuels. These tests showed only a 2.8 percent decrease in fuel economy with the use of reformulated gasoline as compared to conventional gas.

There have also been questions about the performance and durability of non-automotive engines. We had not expected, nor have we or the industry been able to document any significant problems with the use of reformulated gasoline in non-automotive engines (lawn mowers, chain saws, etc.) in spite of the complaints attributed to RFG use in some areas. We have been working with most of the small engine manufacturers and trade associations and most of them agree that RFG is not causing problems. With regard to durability, there are no failed engines, test data, or engineering assessments to indicate that oxygenates or RFG pose increased risk to two-cycle or non-automotive engines. The Portable Power Equipment Manufacturers Association (PPEMA), the representative for most two-stroke engine manufacturers, has found no significant problems. A Task Force set up in the State of Maine to review and evaluate the engine performance issues of reformulated gasoline recently concluded that most engines will not have any performance problems related to the use of RFG. Older engines, however, particularly those built before 1979, should be serviced for potential deterioration of elastomer and plastic parts (hoses, seals, gaskets, etc.). In general, they concluded that proper maintenance and periodic servicing will keep any problems to a minimum. I should mention that some manufacturers of small or off-road engines such as snowmobile manufacturers recommend enriching the fuel-air mixture when using oxygenate-containing gasolines, like reformulated gasoline, just as they recommend enriching the mixture to compensate for lower temperatures when using conventional fuels.

In conclusion, I would like to reiterate that RFG is an important clean air program with significant environmental and health benefits and implementation has progressed relatively smoothly. Although a few areas have experienced initial concerns about the "new" gasoline, those have been quickly addressed and complaints have largely dissipated. We continue to work with state and local officials to address any remaining concerns.

This completes my testimony. I will be glad to answer any questions that you may have.

Mr. BARTON. Thank you. That took about 8 minutes so as not to shortchange the Department of Energy, I will set the clock on 8 minutes for you.

We have John Riggs, Deputy Assistant Secretary for Policy, Planning and Program Evaluation at DOE.

As an aside, when I was a White House fellow at DOE in the early 1980's, that is where I was assigned although then it was called PAA, Policy, Planning and Analysis.

TESTIMONY OF JOHN A. RIGGS, DEPUTY ASSISTANT SECRETARY FOR POLICY, PLANNING AND PROGRAM EVALUATION, DEPARTMENT OF ENERGY

Mr. RIGGS. Thank you, Mr. Chairman. I don't think I will need the full 8 minutes. I would like to summarize my statement, if I may.

I would like to reiterate what Ms. Nichols and Mr. Wyden said. This is a very effective way to reduce smog and toxic emissions, but it is a major change in the gasoline distribution system in our country and posed a major challenge both to EPA and especially to the motor fuels industry.

As you know, before last January 1, there were fears that there would be major price spikes. We heard estimates of 25 cents a gallon and even higher in some instances. Through some close cooperation in government-industry task forces, interagency coopera-

tion, and work with congressional committees, I think we were able to develop response strategies, and that cooperation paid off.

There have been few problems with supply and price. There has been a wholesale price differential of about 5 to 7 cents early on which was close to our estimate of the probable cost difference between reformulated and conventional gasoline. During the course of the year, that fell to 1 to 2 cents a gallon. Now it is up again. But it is within the range that we predicted last fall and that we hoped that we could achieve barring any major events that would impact the system.

One problem is worth noting, and it was referred to in the chairman's statement. The opt-outs that occurred late last year did cause some uncertainty for suppliers about the demand that they were trying to meet and that they had made investments to meet.

The industry operates at the margin and a small change in demand or supply can make a fairly big difference in price. We think that the impact of that uncertainty led to lower stocks of reformulated gasoline throughout the winter season and continuing to the present, and that has made the market more susceptible to changes.

So I guess I would repeat what I said to the Energy and Power Subcommittee last fall; things are going well, but there is still a potential for major price changes for short periods of time if there are external events that impact the system. We will continue to monitor the market, we will continue to work with industry and with EPA to see if we can anticipate and head off these changes, but one of the prices we pay for the benefit of lower stocks, which means lower prices, is greater uncertainty, which can at times mean higher prices.

So we have made a bargain where consumers are accepting a short term price break for potential additional volatility in the market. I think it was something anticipated and we understand and accept it. But if the time comes that we see price spikes, we should not react precipitously.

Mr. Chairman, if my written statement can be inserted in the record, I would be happy to stop and answer questions.

[The prepared statement of John A. Riggs follows:]

PREPARED STATEMENT OF JOHN A. RIGGS, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR POLICY, U.S. DEPARTMENT OF ENERGY

I am pleased to be here today to discuss the progress of the reformulated gasoline program and the price and supply of reformulated and conventional gasoline. Reformulated gasoline is an important and effective way to reduce urban smog and toxic emissions. It represents a new approach the Clean Air Act to control emissions from both vehicles and fuels. Its implementation has been a major challenge to both the motor fuels industry and the government. All facets of the industry were involved—refiners, pipelines, terminals, importers, retailers, as well as environmental interests and federal and state regulators.

Prior to the program start date on January 1, 1995, many analysts believed that implementation difficulties would cause reformulated gasoline to be in short supply at prices more than 25 cents per gallon higher than conventional gasoline. I had the opportunity to discuss these concerns before the Energy and Power Subcommittee last fall. As a result of close cooperation between concerned Congressional committees and the Administration, government-industry task forces were established to anticipate potential problems, fine-tune enforcement requirements and develop response strategies should problems occur.

I am pleased to say that this cooperation paid off. From a supply and logistics standpoint the program proceeded with few problems. Price increases for reformu-

lated gasoline reflected this smooth transition. Early in the year, wholesale prices of reformulated gasoline were 5 to 7 cents per gallon greater than conventional gasoline, quite close to our estimate of the cost differential between conventional and reformulated gasoline. More recently, wholesale price differences between these two types of gasoline fell to 1 to 2 cents per gallon as oxygenate prices declined and in response to other market factors. The current average retail price difference between reformulated and conventional gasoline is about 5 cents per gallon.

As we enter the summer reformulated gasoline program, supplies of reformulated gasoline from domestic refiners, augmented by imports on the east coast, appear to be more than adequate to meet demand. The motor fuels industry and the Environmental Protection Agency deserve credit for a successful program and avoiding significant potential problems that were anticipated last year.

Of course, there have been problems and concerns about the program. Two major areas of concern are the response of some consumers to reformulated gasoline and state opt-outs. Consumers in Milwaukee had significant concerns about the possible health effects of methyl tertiary butyl ether (MTBE), lower mileage with reformulated gasoline and its higher cost. I would defer to the EPA on any specific questions concerning these problems and the approaches taken to alleviate them.

Opt-outs by states on behalf of counties that had previously opted-in to the reformulated gasoline program, and speculation about future opt-outs, have had a direct impact on gasoline markets. Refiners have built production capacity and reformulated gasoline inventories to meet the demand of areas required to have reformulated gasoline by the Clean Air Act and areas that have opted-in to the program. When these voluntary program participants opt-out, reformulated gasoline demand is reduced, resulting in higher than anticipated inventories of reformulated gasoline and oxygenates. Other things being equal, this has the effect of lowering reformulated gasoline and oxygenate prices, at least until the market can adjust inventories and expectations. However, in the longer run, opt-outs create market uncertainty and cause the motor fuel industry to hedge its position. Because of the significant cost required to produce reformulated gasoline, refiners respond to this uncertainty by building smaller inventories than normal. For example, current reformulated gasoline inventories are about 20% lower than normal.

These lower inventories have not created supply problems, but, along with a number of other factors, have contributed to higher gasoline prices. Sharply rising demand, higher crude oil prices, limited excess refining capacity, and generally low gasoline stocks are the major factors that have all contributed to higher gasoline prices. The average spot market price for gasoline increased by 20 cents over the last 2 months while retail prices have risen 13 cents over the same period. However, reformulated gasoline availability has not been a particular problem as evidenced by the small wholesale price differential between reformulated and conventional gasoline.

With growing summer gasoline demand anticipated, gasoline prices may still increase. However, the current high prices may stimulate enough additional supply to bring future prices down even with increased summer demand. Reformulated gasoline prices can fluctuate more widely because of oxygenate costs, which may continue to be volatile.

The Department of Energy will continue its close cooperation with the Environmental Protection Agency in terms of program implementation and identification of any logistical difficulties that may result from enforcement requirements. We will closely examine the recently proposed procedures for state opt-out and provide comments to the Environmental Protection Agency. I would be happy to answer any questions that you may have.

Mr. Barton. That is amazing. That is about 3 minutes.

Mr. RIGGS. It is EPA's program.

Mr. BARTON. The Chair is now going to recognize himself for some questions.

Each of you indicated that the concerns over price increases that we were worried about last fall have not materialized. Is there any data on how much prices have increased in the markets that have gone to the RFG?

Ms. NICHOLS. Mr. Chairman, we have used the figure, which I believe is not original with us, of 5 cents due to the Reformulated Gasoline Program.

There was a 1 cent increase attributable to switching from the winter to the summer program in the areas that don't use reformulated gasoline in the wintertime, don't use the higher oxygenated fuel. We are not the source of that data. We rely on data that is gathered by other agencies.

Perhaps Mr. Riggs would comment further on that. It is our understanding that there has been an increase, I have seen it myself as a consumer in the market, due to a number of factors including more travel, improved economy, et cetera.

Mr. BARTON. Do either of you have a number? Four cents a gallon? Five cents a gallon?

Ms. NICHOLS. Five cents is the number that we have been using, 3 to 5 cents.

Mr. RIGGS. I think it is difficult to single out a particular factor and say that 5 cents is due to the extra cost of reformulated, but that is probably a close approximation and part of the reason for the larger price increase we have seen this spring.

Mr. BARTON. We have some anecdotal evidence apparently of the price increase in that range and certainly no consumer groups are saying that it is 20 or 30 cents a gallon. What about the measurement of air quality? In the nine nonattainment areas where RFG is required and in those areas that have opted in and stayed in, do we have measurements that it is doing what we wanted it to do? That is, reduce the VOC's in the air?

Ms. NICHOLS. We have monitoring data which we collect in all the areas that are using reformulated gasoline and in areas that have been using it for some time. We can correlate improvements in the winter program as a result of reductions in carbon monoxide directly attributable to the program. So we have areas that are now attaining the carbon monoxide standard in the winter because of carbon monoxide. In the case of the summer program, the program began in January and its primary benefits will be felt in ozone in the warm weather months. So we will be tracking that and we will—

Mr. BARTON. I guess—the Congress would like to know that a program that we intended to reduce VOC's is actually doing that. Is EPA or DOE or any other agency going to try to gather data to prove or disprove that it is working, because we have invested billions of dollars and motorists are paying some percentage in higher prices. We would like to pat you on the back and say it is working, but we want to make sure that we can prove that it is working.

Ms. NICHOLS. Absolutely. As you know, there is an indirect correlation between emissions of VOC's and actual measure of ozone in the air. There is a correlation and we will be measuring both of those.

Mr. BARTON. This is a more difficult question.

There are certain areas that had the opportunity to opt-in voluntarily. The Dallas-Fort Worth area where I live is one of those areas, although I don't live in one of the nonattainment counties.

Some of the States have certain areas that have opted in. In Pennsylvania, I believe, the State and these areas have now decided to opt out. The proposed rule on opt-out is designed to address this situation. I think if you voluntarily opt in you can voluntarily opt out, but I am not so sure that you should be able to opt

out in 30 days if a billion dollar investment has been made to provide gasoline that is no longer economic since areas which previously indicated they would use RFG are not going to have to purchase it.

How do you handle that problem? Where areas opt in, industry gears up for 4 or 5 years to provide the reformulated gasoline or other alternative fuel and then they decide to opt out. Do you say 30 days later, you are out of here?

Ms. NICHOLS. Mr. Chairman, the proposed rule on opt out actually divides areas into three different categories. Only areas where the reformulated gasoline is not needed for attainment of air quality standards and was not relied on by the State as part of its attainment plan have the 30 day period.

If a State has actually relied on the Reformulated Gasoline Program to demonstrate attainment and that has been approved into their plan, then they have to go through a process of revising the plan, coming up with alternative measures and getting those approved, which is a process that takes a minimum of 6 months to complete. Similarly, if the State has submitted a plan, but has not yet been approved, we have determined that probably 120 days is a reasonable period of time for them to come up with a replacement without having to go through the same amount of administrative process which wouldn't be needed.

This is a delicate balance between the interest of the fuels industry, which makes heavy investments in order to supply the right kind of fuels, and the interests of States and local governments where we have tried to encourage the maximum amount of flexibility and local choice about how to pick and choose the measures that they are going to use to comply with air quality standards.

We are trying to strike a balance here that on the one hand signals our strong support for the program. We would like to see areas opting into this program if they think it is useful to them because we think that the reformulated gasoline is a very good product and a cost-effective way to keep the air clean.

On the other hand, we don't want them to do it so lightly if there is a spike in the market they opt out.

Mr. BARTON. Let me interrupt that elaborate answer.

If an area opted in voluntarily and industry said we are not going to do the infrastructure investment to provide the gasoline, would there be the penalty to the refineries? If somebody voluntarily opted in and industry said it is too uncertain, we are not going to spend the \$300 million or half-a-billion dollars or whatever it is to gear up because they could opt out next year or they could opt out before we even get a chance to sell what we have invested, would there be any penalties?

Ms. NICHOLS. First I guess you would have to say, would the market provide. We have found that despite a lot of talk about this, that companies decided that it was worth the risk of making the investment to get into this market because it is 30 percent of the gasoline that is sold in the United States even without opt-ins. The opt-in areas are a tiny fraction. It was 33 percent of the areas with opt-ins. It would be 30 percent with voluntary——

Mr. BARTON. Are there no penalties then?

Ms. NICHOLS. Yes, there are penalties for refineries that don't supply gasoline that complies with the requirements. Once the program is in place and has been approved, any company that supplies gasoline that doesn't meet the specifications is subject to fines and penalties from the EPA. I believe that it is unlikely that no refinery would choose to supply an area if the area had opted into the program.

Mr. BARTON. I gave myself 8 minutes and my time has expired. We will have a chance to have a second round with this group and I have some additional questions.

At this time I would yield to Mr. Wyden for 8 minutes also.

Mr. WYDEN. Thank you, Mr. Chairman. Our friend, Mr. Waxman, is trying to be the bionic man today and be everywhere. I would like to yield him my time.

Mr. WAXMAN. Thank you very much, Mr. Wyden, and Mr. Chairman, for allowing me to go ahead with my comments. We have another subcommittee meeting where I am the ranking member and I did want to be present for that hearing, as well.

I want to commend you for holding this hearing today. Unfortunately, there is this other hearing at the same time. But this is an opportunity for me to come and congratulate everybody involved, particularly the oil industry.

When we passed the Clean Air Act amendments of 1990 we placed a number of new burdens on the oil industry. We required them to reduce the volatility of fuel, to oxygenate the fuel, to reduce carbon monoxide emissions and to reformulate the gasoline. These were not easy challenges to meet, but the industry has succeeded in meeting them.

This is a terrific achievement. It is dramatically improving the quality of our air. As someone who has often been on the opposite side from the oil industry, I am glad to have this opportunity to commend them in public for their accomplishments.

Second, I want to underscore the success of the fuel provisions of the 1990 Act. We have made enormous progress in cleaning up the air in the last 5 years.

In 1990, we had 100 ozone nonattainment areas. Today we have less than 50.

Likewise we have drastically reduced the number of carbon monoxide nonattainment areas. The single most important cause of these improvements has been the changes in fuels required by 1990 act and implemented by the oil industry.

These days we constantly hear about government programs that don't work, but the Clean Air Act is working. Its fuel provisions are a perfect example of how our laws can clean up pollution in the most effective ways possible. I wanted to make these comments and to greet Ms. Nichols and Mr. Riggs, particularly Mr. Riggs, who is in a different position in our subcommittee than usual, because we usually see you back here giving us the questions to ask not being the recipient of the questions. I am going to spare you. I have no questions.

I want to congratulate everybody for making this part of the Clean Air Act work. It is important for the health of the American people.

I yield back the balance of my time.

Mr. BARTON. Thank you. We will be sure to bronze those comments on the oil industry.

The Chair would now recognize Mr. Wyden.

Mr. WYDEN. Thank you Mr. Chairman.

I want to follow up a question for my good friend and neighbor, Mr. Riggs, on this pricing matter that was begun by the Chairman. We understood from the testimony that the wholesale price differential between reformulated gas and regular gas was about 1 to 2 cents per gallon yet the current average retail price difference seems to be about 5 cents per gallon.

I guess there is some debate as to exactly what these numbers are. But I think the question for me that is important is, is the Department, Mr. Riggs, going to look into—into why this retail price difference seems to be so large?

Mr. RIGGS. The first thing I would suggest is that the spread has changed throughout the last few months. I think it started at around 5 cents, dropped to 1 to 2 cents and is up closer to 5 cents now. The administration is tracking that on a regular basis and trying to determine causes for it.

At this point I don't think we have seen anything that we would consider collusion or inappropriate activity on the part of the industry. We think it is a normal reaction of markets.

Markets do work and when there some kind of a shortage, the price goes up a bit and it can call in either domestic production or imports. That is what has happened. We have had a few weeks with very high imports of reformulated when the spread was high. When the spread is lower, those imports drop again. I think it is a signal that the market is working, not that we have a problem.

Mr. WYDEN. What do you think is the retail price difference at this point today? Is it 3 cents?

Mr. RIGGS. If I could consult with one of the experts from—

Mr. WYDEN. Sure.

Mr. RIGGS. In the northeast, on the East Coast, it is about 4 cents at this point, the spread.

Mr. WYDEN. That is, in my view, a significant price difference and I think it would be very helpful if you all would investigate this matter and report back to the subcommittee what factors are in your opinion that account for that price differential. Nobody is making any wild charges here or anything of the sort, but I think it is important for the Department to look into that.

Is that something that you could do with your folks, to look into this consumer issue and report back to us?

Mr. RIGGS. We will obviously do it. Let me understand your question. I think we had anticipated an additional cost of production for RFG of about 5 cents so a price spread of about 4 cents seems to be—

Mr. WYDEN. We are concerned about the difference between the wholesale and the retail.

Mr. RIGGS. I am sorry; I thought you were talking about the spread between reformulated and conventional.

Mr. WYDEN. No. We are talking about the difference between wholesale and retail.

Mr. RIGGS. Yes. There has traditionally been a lag between wholesale prices and retail prices and wholesale prices have started down again.

Mr. WYDEN. How long do you think it would take to get that kind of information?

Mr. RIGGS. To prepare it wouldn't take very long. To clear it through the government—we will do our best.

Mr. WYDEN. 30 days?

Mr. RIGGS. Yes, we will have it to you in 30 days.

[The information follows:]

Price differentials between RFG and conventional gasoline at the wholesale and retail levels differ due to two classes of factors: definitional differences between the prices used in the comparison and market factors influencing prices at the two levels.

The wholesale differential quoted in the testimony is derived from New York Harbor spot prices, while the retail figure is the difference in national average retail prices as collected by the Energy Information Administration in a weekly survey. Conventional gasoline and RFG are sold side by side at the refinery, and through certain points in the distribution system, but not at retail, where each area is designated by EPA and State authorities to use a certain type of fuel. Thus, direct comparisons of RFG and conventional prices are possible at the refinery (spot) level, with the difference presumed to represent the additional cost or market value of RFG as opposed to conventional gasoline. Retail comparisons, however, are complicated by additional considerations, including differences in geographic area, urban/rural characteristics, State tax rates, and transportation costs. The retail RFG average includes largely urban areas in the Northeast, Chicago, Los Angeles, and other cities, while the average conventional price includes the remainder of the United States, excluding those areas participating in the winter oxygenated gasoline program. (Oxygenated gasoline prices are excluded from both averages to avoid price shifts at the beginning and end of the control period for that program.)

Nevertheless, it is reasonable to compare the trends in wholesale and retail differentials, if not their actual values, in order to observe market adjustments to the RFG program. The RFG/conventional gasoline price differentials at both wholesale and retail have fallen significantly since the introduction of RFG. On the New York Harbor spot market, the price differential averaged about 5 cents per gallon from November (when RFG began to be widely traded) through mid-February when the falling price of oxygenates began to impact costs. The differential fell to zero in late April and recently has been about 2 cents. By contrast, the national average retail price differential fell from around 12 cents at the beginning of 1995 (when retail RFG sales officially began) to about 5 cents at present. Therefore, the difference between the wholesale and retail differentials, ignoring their different statistical bases, has fallen from approximately 7 cents at the beginning of the year to about 3 cents today.

Explanations for the different trends in the wholesale and retail price differentials, leading to the perceived discrepancy between them at any point in time, include the different manner in which the two markets react to various stimuli. Outside of raw materials costs (in the case of gasoline, primarily crude oil and oxygenates), the single biggest factor in gasoline prices over time is seasonality. Gasoline paces at all levels, reacting to pressures on the supply/demand balance, tend to rise in the spring and summer, and decline in the fall and winter. The exact timing of these changes, however, differs between wholesale and retail markets. As with most other trends in gasoline markets, the seasonal effect is usually seen first at wholesale, in response to changes in production and inventory patterns, then filters down to retail. Wholesale prices, and particularly spot prices, tend to be more volatile than retail, often moving up or down by significant amounts in a day's trading. These changes may not even be seen in retail prices unless the trend continues for several days. Additionally, a period of major transition for markets, such as the introduction of RFG, requires adjustments in supply, inventory and demand patterns at all distribution levels, which are eventually reflected in prices.

Mr. WYDEN. The consumer issue is the difference between wholesale and retail and that would be helpful.

Ms. Nichols, a question on the matter of the progress that is being made. I think you heard me say that I am very encouraged by what has been done.

I think that we are on our way to a significant success with substantial benefits at relatively lower cost. My friend, Mr. Barton, asked what I think is a logical question as well as to what we could tell people has actually been achieved to date.

Could you begin by telling us what you think the principal achievements to date are of this program?

Ms. NICHOLS. With 6 months of the program under our belt, we have changed the gasoline that is used by a third of the consumers in the United States and done it with a relatively minor amount of difficulty and complaint, thanks largely to the cooperation of our colleagues in other parts of the Government, the States, and within the Federal Government, and of course the petroleum industry.

I think that is—whenever you introduce any new product into the marketplace, you have a major burden to convince consumers that the product is worth buying and when you do something that affects people's gasoline, you are really meddling with one of the products that people use on an every day basis and the fact that the program has been accepted as well as it has in most areas and by most of the people I think is a tribute to everyone who is involved.

In terms of what we can show for it, in terms of improved air quality, we can certainly point to a continuing trend in the right direction towards attainment. But as I said earlier, we will need to monitor performance very carefully over the next couple of years to make sure that the benefits that we have anticipated and assigned to this program really are occurring.

At this point what we have seen is that the emissions data corresponds with what we had indicated, that we are not experiencing any of the problems with fuel economy or performance that some people had alleged might occur, but it takes awhile longer for it to show up in terms of measurements of the ambient air that can be leveled for weather and where you can say scientifically that you have achieved the benefits that you planned.

Mr. WYDEN. If we didn't have the RFG program, what other steps would have to be taken to achieve a similar level of clean air benefits? It seems to me we would have States going after producers—

Ms. NICHOLS. One way of answering the question would be to point to the example of Maine, which recently looked at its strategy for complying with the Clean Air Act and concluded that when they looked at all the other options that were available to them, reformulated gasoline was by far the preferred choice, both in terms of cost and of consumer convenience, over any other alternative for stationary or mobile sources.

Certainly in the mobile source area, which is 50 percent of our smog problem, there are no other options short of extreme controls on driving, a ban on gasoline or requirement of a total switch to alternative fuels or some zero emission vehicle concept like an electric vehicle to achieve the same kind of results.

If you look at other possibilities in the area of stationary source control, you are looking at some pretty drastic controls on facilities

which have already by and large been through regulation in the past.

So, frankly, we don't see any alternative to this program.

Mr. WYDEN. My light is on, but so you know for the next round, we have some matters to discuss involving ethanol.

Mr. BARTON. The Chair would now recognize Mr. Crapo for an opening statement and some questions. We have the clock set on 8 minutes.

Mr. CRAPO. Thank you, Mr. Chairman. I will defer both and we can proceed.

You owe me 8 minutes, though.

Mr. BARTON. You surprise me.

The Chair would then recognize himself for a second round of questions.

Mr. Riggs, when I was asking Ms. Nichols about the 30-day opt-out provision and the proposed rule, you were strangely silent. What is the DOE's position, if any, on these requirements regarding opt-out?

Mr. RIGGS. We have just received the proposed rule and we will make comments to EPA. As I indicated in my statement, we do have some concern about adding uncertainty to the market.

On the other hand, we also share the concern that Ms. Nichols stated and that you stated in your letter to us last November or December that we need to make sure that the public accepts and supports the Clean Air Act, and sometimes this kind of flexibility is what retains their support for the act. That is the balancing act we have to achieve here. I have not been fully briefed on the rule, but we will submit comments to EPA and work with them on that.

Mr. BARTON. You don't even want to give us a hint of what the Department's position might be?

Mr. RIGGS. I think I gave you a hint. We are concerned about uncertainty and that does have an effect on price.

Mr. BARTON. I am not opposed to opt-out if it is voluntary. When regions voluntarily opt in, I think it should be allowed that they can opt out. I am not opposed to that. But I am concerned with how this is accomplished. Everyone has been giving compliments to the industry, the oil and petroleum industry today. However if this industry gears up to serve a region of the country that has voluntarily opted in and they opt out quickly, they are stuck with an investment in infrastructure, they are stuck with an investment in stocks that are admittedly consumable, and they may be stuck with some transportation requirements that they would not need for the other types of gasoline.

So I would like for the EPA and DOE and whoever else in the interagency review to give some thought to requiring when areas opt out that existing stocks that were expressly refined for that region, enough time be given that it can be consumed, and if it can be proven that there were infrastructure investments made specifically for that region, that there be some time so that there is at least a recovery of the capital investment.

You can still opt out. However, if we have invested \$500 million, you may not be able to opt out until January of the following year, so that there is a recovery allowed. And I would think that the industry could provide documentation and that you could set up all

kinds of regulatory requirements on proving the investment in the consumable stocks, et cetera. I am very much for people opting out if they wish to, but we shouldn't ask industry to gear up to meet a demand and then when they gear up to do it, the demand isn't there.

Ms. NICHOLS. I agree with your point there, Mr. Chairman. I think that—as you know, we are in the comment phase now on the proposal and we will be looking for comment on these issues.

Just to clarify a couple of points, we have heard in the process of framing the proposal from a number of industry representatives, both individual companies and associations, and there is not a uniformity of views, at least so far, about what the transition period ought to be. There have been some industries who have—industry representatives who have actually urged us to make the time quicker rather than to draw it out. I am not certain what the rationale for that is.

Mr. BARTON. Maybe they haven't made the investment yet.

Ms. NICHOLS. I assume there is some competitive reason.

The issue about existing stocks being consumed, I wanted to clarify that. There is no prohibition—if an area opts out, the existing stocks are not required to be removed from the market, but there is a concern about what price can be charged.

Mr. BARTON. They cost more and if the motorist sees a 5 cent difference across the street, the motorist goes across the street most of the time unless you are on a government credit card and then it doesn't matter.

There have also been concerns raised at the borders of nonattainment areas. There is a price differential and motorists drive out of a nonattainment area to purchase nonreformulated gasoline at a reduced rate. Is there documentable proof to that effect and, if so, how big a problem is that?

Ms. NICHOLS. We looked into this issue in Wisconsin. It was being raised as a concern by some dealers who operate on the edges of the area around Milwaukee that is required to use reformulated gasoline, that people were driving past their stations and going to stations out of the area to buy nonreformulated gasoline. At the time that that was looked into, it turned out that the price differential was somewhat exaggerated and the issue seems to have died down.

The issue in Wisconsin was centered around people's concerns about the use of MTBE in the wintertime and once studies on that issue were undertaken, the rest of the complaints seemed to die away. The issues about the different prices in different stations are complicated I guess and volatile in terms of how to study them.

I have been very concerned about where you draw the line for distribution of one fuel versus another and making the region big enough so that you don't create an incentive for people to just jump out of the area to buy their gasoline. But based on our conversations with the States so far, they are not finding this a significant problem.

Mr. BARTON. Do you agree with that, Mr. Riggs?

Mr. RIGGS. I have nothing to add. It occurs to me that this would be similar to differences in a sales tax or a motor fuels tax between two States. I have seen people drive across the District line to

Maryland or the other way around depending on the size of the tax. I would assume there is some of that you cannot avoid.

Mr. BARTON. I am going to recognize Mr. Wyden for some questions, but on the ethanol issue, we could have done an entire hearing just on the ethanol. The record shows from last fall that I am adamantly opposed to this 30 percent set-aside for ethanol for the oxygenated fuel market. We now have a court ruling declaring the set-aside improper and EPA doesn't agree with it. Several Congressmen on the other side were very concerned that I would turn this into an anti-ethanol hearing and I am not going to do that.

But please be aware that we are watching what is going on and we may do a hearing just on the ethanol issue. If we do, it will be a balanced hearing and those who are supporters for an ethanol program will have an opportunity to be here and we will have witnesses that support that position. But that subject is more than we should put into the reformulated gasoline hearing.

Mr. Wyden.

Mr. WYDEN. Thank you, Mr. Chairman. I want to pursue this matter of what seems to be an EPA addiction to ethanol.

Mr. BARTON. Let the record show that it is the minority that is bringing this up.

Mr. WYDEN. That is fine. We have a good program, a program that is showing significant environmental and health benefits. I came out of the box and said it looks hassle-free as opposed to other things that we have listened to and yet the EPA seems to be adamant in trying to use the program to promote renewable fuels by requiring a minimum percentage of RFG additives to come from renewable sources.

What concerns me is the possibility that you are going to try to use this program to do double duty, and that is going to hurt both programs. That is going to hurt the effort to clean up the air and also hurt the renewable fuels effort.

Now, my sense is we have got governmental programs to promote renewable fuels. So I would like you to know that I am concerned about this issue.

Mr. Riggs made a very telling point a minute ago where he said uncertainty creates problems with price and I asked Mr. Riggs, for example, to report back to us on the difference between wholesale and retail which is going to concern our consumers. My guess is that this ethanol mandate issue is going to create uncertainty.

So I would like to hear your explanation of why the agency persists in tinkering around with something that I think could jeopardize two governmental efforts, and your thoughts on that would be helpful.

Ms. NICHOLS. Yes, Mr. Wyden.

First of all, although I am a devotee of California wines, I don't think I have ever been accused of being an addict of alcohol before. But I am a supporter of the program.

As you had indicated, EPA is in the process of appealing a ruling. The Department of Justice will make the decision by the 12th in terms of an appeal for a rehearing en banc of the decision on some local legal points that we feel misinterpreted or misapplied the Chevron case to this particular situation.

I would just like to point out that with respect to EPA's position on this issue, we actually took great care to make sure that our interest in renewable oxygenates in the program did not interfere with the success of reformulated gasoline as a whole. The proposal that was on the table when this administration took office was a proposal by the Bush administration that would have created a market for ethanol by forcing refiners to do more refining to produce a lower RVP gasoline so that the addition of splash blend ethanol could still meet the air quality requirements in the fuel.

Even then we believed very strongly and still do believe that that program of mixing was likely to cause increased VOC and to undermine the air quality benefits of the program. This administration rejected that proposal, took another look at the issue of how to make sure that there was a choice of oxygenates available in the reformulated program and a continued availability of renewable opportunities in this massive new program and concluded that the most appropriate way to do it was through a direct mandate which was severable from the reformulated program.

As a result, even when the suit by the API was successful in the court of appeals and stayed the program, that did not affect reformulated gasoline. The program in fact has gone forward. There are oxygenates of all varieties being used in the marketplace. So this program has not had an adverse effect on the reformulated gasoline roll-out.

Mr. WYDEN. A question for both of you.

Aren't there other Federal programs that could promote renewables besides the reformulated gas program?

Mr. Riggs?

Mr. RIGGS. Yes, there are others. We have alternative fuel vehicle programs, Federal fleets and so on. But I think from the Department of Energy's point of view, the attraction of the renewable oxygen standard that EPA has proposed is that it may create a demand pull situation.

One of our most important research programs for the Department is to try to bring the price of cellulosic based ethanol down to where it can compete with gasoline. And we think that is possible within the next decade or so. If we succeed in doing that, we will make major gains in both greenhouse gas reductions and reducing oil imports. We think that is a worthy goal and we think that can be done, in part, by creating this demand through the EPA proposed standard.

That doesn't mean there are not other ways to do it. It can be done through tax incentives, it could be done through more money for research. Some of those are going away.

Mr. WYDEN. Ms. Nichols, do you want to add anything to that?

Ms. NICHOLS. No, other than to say that EPA has done a considerable amount of work on alcohol fuels including on the engine development side, as well as programs that implement renewable fuels in fleets, and we are enthusiasts of those programs.

Mr. WYDEN. Well, I think my Chairman was awfully diplomatic on this point. I am concerned that this ethanol mandate is going to complicate, at a minimum, and potentially disrupt a program that is showing great promise. And I am concerned about some of these pricing issues under today's arrangement.

And I think if we are sending a message that an ethanol mandate is coming, and that certainly does appear to be the one that the administration is sending, that is going to inject additional uncertainty out there in the marketplace. So I look forward to working closely with the Chairman of the subcommittee on this matter.

Mr. BARTON. Thank you, Mr. Wyden.

The Chair would now ask the gentleman from Idaho if he had questions at this time.

Mr. CRAPO. Yes, thank you, Mr. Chairman. I hadn't intended to ask any questions of this panel, but being a strong ethanol supporter, I'm glad that I was here when the discussion began.

I have been very involved in the ethanol program out in my own home State of Idaho and strongly believe that there is the kind of potential for that product and for the development that has been discussed by the members of the panel.

I also am one who tends to not support mandates and likes to see solutions that are more incentive based and market oriented. And so I think that there may be some common ground here and I appreciate the Chairman's comments that if we hold a hearing on ethanol, it will be balanced and we can look for some solutions to really find the right avenues to helping to promote what I think is a very good development and one that has great potential.

I guess the question I have is just a follow-up on the question from Mr. Wyden and that is, are there ways that we can address the ethanol issue other than through a mandate?

Ms. NICHOLS. Mr. Crapo, in a recent announcement on EPA's position about the court ruling, Administrator Browner indicated two additional measures that don't relate to mandates that EPA is planning to implement with respect to renewable oxygenates.

The first is that we plan to look at the possibility of removing the existing cap in the reformulated gasoline program on the amount of oxygenate that can be used in the summer program. As we've learned more about the product and our ability to model and measure has improved, we have seen that it may be possible that the limit which was designed to prevent this problem of commingling that I mentioned earlier may not be needed.

And so, we are investigating the possibility of being able at the request of a governor, to allow more use of ethanol or other oxygenates in the mixture of reformulated gasoline.

The other point is that EPA plans to issue guidance to any states that want it to implement a program of pump labeling. Based on our experience in Wisconsin, one of the things that we learned is that consumers were most upset about not having a choice about which type of oxygenate they were being exposed to.

People felt that the government had foisted off a program on them and that they were being forced, whether they wanted to or not, to use one additive or another. So we believe that if consumers wish to exercise the option of knowing which type of additive they are using, that that is something that at the option of a state they should be able to do. And we will issue guidance to states. We will not require it, but if states want to implement that type of program, we will assist them in doing it.

Mr. CRAPO. I appreciate that and I would just comment, we in Idaho have had the pump labeling and we have had the oppor-

tunity to, within the limits allowed, see what can be done with ethanol in our fuel. And I think that there is an opportunity in an open market for this to work.

There may be the necessity to have some additional research and to make the breakthroughs that are necessary that we still are working on, but I would hope that we can work together to make that a reality.

Mr. RIGGS. If I could add two points on that. As you indicated, the research is critical, and it has been successful so far. We are not there yet, but it would be criminal, I think, to cut off such a successful program now, and there is a risk in the appropriations process that the work that is being done at the National Renewable Energy Lab with cooperative agreements with industry could be terminated before we achieve the potentially huge benefits to the country.

The other thing I would mention is also in the area of incentives rather than regulations. The farm bill is up for reauthorization, and one of the areas where there may be potential for advancing cellulosic biomass is converting some of the set-aside programs so that they can be used for energy crops. And that, coupled with the technological advances that are being made through the Department of Energy, could lead to the kind of market incentives that I believe you are looking for to bring biomass-based ethanol into the market more fully.

Mr. WYDEN. Will the gentleman yield?

Mr. CRAPO. Thank you. Certainly.

Mr. WYDEN. I want to commend the gentleman from Idaho for talking about this kind of approach for incentives. And as a Northwest colleague, I very much would like to work with you as an alternative to this kind of mandate approach and I appreciate you bringing it up.

Mr. CRAPO. Certainly. Thank you. And I do sit on the Agriculture Committee, too. I appreciate that suggestion.

Thank you, Mr. Chairman.

Mr. BARTON. Does the gentleman from Oregon have any additional questions?

Mr. WYDEN. No.

Mr. BARTON. Then I have one thing that is on a different subject I want to bring up with Ms. Nichols before we let this panel go.

On May 25, I sent a letter to Carol Browner concerning the BAQA and the American Society for Heating, refrigerating and air conditioning engineers dealing with a problem with one of the employees at EPA, a Dr. Tucker. You may not have seen that letter yet.

Ms. NICHOLS. I have seen the letter, Mr. Chairman.

Mr. BARTON. That is a very serious letter. I don't normally sign letters like that and I put a lot of thought into that letter.

We asked for a lot of information. We expect to receive it in a timely fashion, because on the surface there appear to be some extremely serious issues that have either been covered up or if you want to be real negative, consciously misrepresented to this subcommittee.

And so if you will express to Mrs. Browner the seriousness of that letter and the absolute requirement that there be a timely response.

Ms. NICHOLS. Yes, Mr. Chairman. I was also distressed to receive the letter and we have begun an investigation internally. We will have a response to you on or before July 12.

We take the charges seriously. I also am personally chagrined that in responding to an earlier letter of yours on a related subject that I apparently only give gave you partial information which was correct with respect to my program but which did not include other information about the agency's work in that area. So we will make sure to give you a full and complete answer.

Mr. BARTON. Thank you. We thank each of you for coming and testifying. The testimony has been very helpful.

Mr. BARTON. We will now ask our second panel to come forward.

The Chairman would recognize our second panel. We want to indicate that each of you are going to be asked to testify under oath. Do any of you have a problem with that? Okay. You also have the right to be advised by counsel. Do any of you wish to avail yourself of that opportunity?

If you will stand and raise your right hand.

[Witnesses sworn.]

Mr. BARTON. Be seated.

We have a very distinguished panel. We have Mr. Wayne Smithers, Senior Vice President, Supply and Marketing for Valero Refining & Marketing Company in Houston, Texas. We have Mr. Charles DiBona who is the President of the American Petroleum Institute located here in Washington. We have Mr. Edward Dineen who is Vice President, Worldwide Co-Products and Raw Materials for ARCO Chemical Company in Newton Square, Pennsylvania. And Mr. Samuel T. Ewing who is from Ashland Petroleum Company, representing the National Petroleum Refiners Association. The headquarters of the association are here in Washington.

We will begin with Mr. Smithers. Since there are four of you, we will give each of you 5 minutes to summarize your written testimony and then we will have a question period.

Mr. Smithers.

TESTIMONY OF WAYNE D. SMITHERS, SENIOR VICE PRESIDENT, SUPPLY AND MARKETING, VALERO REFINING AND MARKETING COMPANY; EDWARD J. DINEEN, VICE PRESIDENT, ARCO CHEMICAL COMPANY; CHARLES J. DIBONA, PRESIDENT, AMERICAN PETROLEUM INSTITUTE; AND SAMUEL T. EWING, ASHLAND PETROLEUM COMPANY, ON BEHALF OF NATIONAL PETROLEUM REFINERS ASSOCIATION

Mr. SMITHERS. Mr. Chairman, Congressman Wyden, I would like to thank you for inviting Valero to give comments regarding the Federal RFG program to the subcommittee today. Valero Refining is a small independent refiner with a single refinery located in Corpus Christi, Texas.

We are totally committed to the reformulated gasoline and clean fuels program. We participated with the NPRA in the regulatory negotiations starting in 1991. We spent 4½ months in that process. We spent a great deal of time working with the drafts of the regu-

lations going back and forth with the EPA. And we remain committed through our membership in the NPRA and the Oxygenated Fuels Association.

Most importantly, we have invested approximately \$600 million in hardware in our refinery to allow us to make 100 percent reformulated gasoline and low sulfur diesel. We have also constructed a butane upgrading project which makes about 16,000 barrels a day of MTBE, which is one of the oxygenates used in reformulated gasoline.

This commitment to the fuels program and to the environment was recognized last month by the governor of the State of Texas. We were given a special award for environmental excellence. It's the only time a refiner has ever received this award for our commitment to the environment and our ability to match investment decisions and environmental concerns.

We made the decision, the business decision to participate in reformulated gasoline and the oxygenate program, and at the onset, there was no provision for recovered area to opt out of this program. Without some kind of an assurance of this nature, you would never make this type of investment. And at the very beginning of the reformulated program, the EPA allowed the states that had opted in areas in Pennsylvania and New York to opt out.

That opt-out resulted in a reduction of demand of approximately 250,000 barrels a day of reformulated gasoline. That volume represents two-and-a-half times the volume that the refinery the size of Valero can produce. This decision was taken in less than 30 days. At the same time, the time it took to develop the regulations to tell the refinery how to produce the reformulated fuel, what the penalties would be if they didn't comply, took 2½ years.

Now, we are just concerned about the fact that the EPA's attitude is giving a significant degree of uncertainty. Again, we do not have any concern about opting out, if people have opted in, so long as it is a measured process and one that allows time to react to it.

We are further impacted by the lack of direction and indecisiveness on oxygenate levels with the carbon monoxide, CO, nonattainment areas. When the State of New Jersey tried to opt out in January of this year, they were allowed to end their oxygenate winter program 2 months early. This left oxygenated fuels in storage and at a real cost to us.

This continued uncertainty through the first quarter of the year resulted in us having to shut down a \$300 million, 15,000 barrels a day MTBE unit for part of the first quarter of this year due to lack of margin. Our concern is that the EPA's action has contributed to a sense of uncertainty that undermines a program that the agency has vigorously defended in earlier months.

We believe that there should be some action taken early by the EPA on the oxygenated fuels question. There is no reason that by August of this year, they can't have clarified whether or not states such as New Jersey are required to be in this program or not and what is required in the rest of the country—what is going to happen in Wisconsin. Every decision that was made was followed by a statement that we will study it and we will get back to it later. We are now in June and we have heard nothing.

We welcome the proposed rule that has come out allowing for a measured and a policy on opt-out and asking for comments on an opt-in.

We at Valero made a business decision to participate in this program. And we will stick with that decision. We need an official opt-out policy. We would like to see it based on scientific information. And we would like to see a sufficient lead time.

Just as we need an opt-out program, we feel there is a need for an RFG program for opt-in and this will allow the cities that are in attainment to opt for RFG if they believe it is the most cost-effective way to maintain attainment and stay in a growth mode.

Mr. BARTON. Your time has expired, but we will give you a little additional time. But please summarize as quickly as possible.

Mr. SMITHERS. Just one thing. We are not asking for any special consideration, a change in law, or economic protection from decisions we have made. All we are asking is that the ground rules be made clear so that we can continue to operate in this industry and continue to make investment decisions.

Thank you.

[The prepared statement of Wayne D. Smithers follows:]

PREPARED STATEMENT OF WAYNE D. SMITHERS, SENIOR VICE PRESIDENT, SUPPLY AND MARKETING, VALERO REFINING AND MARKETING COMPANY

Valero Refining is an independent refiner with a single refinery located in Corpus Christi, Texas. Committed to Reformulated Gasoline and the clean fuels program, Valero produces substantially all of our gasoline as Reformulated Gasoline. We thank you for inviting us to give comments regarding the implementation of the federal RFG Program to the Subcommittee today.

Valero's commitment to the clean fuels program required under the Clear Air Amendments of 1990 (CAA90) is evidenced by our participation in the administrative process that lead up to the final promulgation of the regulations, our significant investment in refinery hardware to allow us to produce reformulated gasoline and low-sulfur diesel fuel, and our commitment to distribution facilities to serve the reformulated gasoline market. This commitment was recognized by the Governor of the State of Texas last month when Valero was presented with a Special Award for Environmental Excellence for "providing community leadership and demonstrating to other industries that environmental protection and economic development can go hand in hand."

Commitment

Valero participated in regulatory negotiations to assist in promulgating regulations under the Clear Act Amendments of 1990. These negotiations lasted for 4½ months in Washington and the negotiating group was made up of representatives from oil companies, renewable fuels companies, U.S. government agencies, state and national environmental groups, auto groups, and other trade organizations, as well as the EPA. We actively participated in the draft, review and comments in the final formulation of the regulations for over a year and a half following the regulatory negotiations, and remain active in the fuels committee of the National Petroleum Refiners Association and the Oxygenated Fuels Association supporting reformulated gasoline and oxygenated fuels.

Valero invested approximately \$600 million to allow us to produce all reformulated gasoline and all low-sulfur diesel. This investment included the construction of a hydrocracker reformer complex, a reformate splitter, and a butane upgrading project to make the natural gas derived clean fuel additive, methyl tertiary butyl ether (MTBE).

Impact of EPA's Uncertainties Surrounding Opt-Out

Valero made a business decision to participate in both the oxygenate program and the RFG program assuming that both programs were effectively and predictably enforced. At the outset, there was no provision for a covered area to opt-out of either program. Without this kind of assurance, a refinery simply could not make long term investments. The extent of this program as defined by the RFG regulations,

resulted in an overall demand projection of over 2½ million barrels per day of reformulated gasoline in the U.S. based on historical data.

At the beginning of the RFG program, the EPA allowed opt-outs with no policy or logical reasons and thereby reduced the demand for reformulated gasoline by approximately 250,000 barrels per day. This reduction occurred in the very markets in which we had made substantial commitments to deliver RFG. It would take 2½ refineries the size of Valero to produce the volume of RFG that was wiped out by the EPA in less than thirty days with no apparent process other than political expediency. On the other hand, it took 2½ years to finalize the detail regulations telling the refineries what they had to make, how they had to make it, and how severe the penalties would be if they did not comply. EPA's attitude in allowing opt-outs and the significant degree of uncertainty that it caused, forced the value of RFG to drop over 6.6 per gallon in the month following the EPA opt-out agreement in Pennsylvania and New York (see Attachment "A").

Valero was also impacted by the EPA's lack of direction and indecisiveness in requests to reduce oxygenate levels in RFG during the winter carbon monoxide (CO) non-attainment period. For such CO non-attainment areas, the Act requires oxygenated gasoline, or oxy-fuels, during the winter months. Like RFG, oxy-fuels have a required level of oxygenates. In January, when New Jersey requested suspension of its winter oxy program, the EPA made a decision not to enforce the 2.7% oxygenate requirement—effectively allowing New Jersey to end its oxy-fuel program two months early. The EPA also said that they would "review the requirement" prior to the start of the 1995/96 winter oxygenate program. In early February, Wisconsin said it wanted to opt-out of the RFG program and, after waffling on the issue, the EPA denied the opt-out request but agreed to support studies regarding the effects of RFG and then to make a decision on future requirements. In short, EPA's actions have contributed to a sense of uncertainty that undermines a program the Agency had vigorously defended only months earlier.

This continued uncertainty in the market needs to be addressed by the EPA and, in particular, we need to have some degree of certainty before we get into this winter's oxygenate season. By August of this year, EPA should make a definitive decision on the oxygenate requirements for the 1995/96 period in order for the industry to have some time to prepare for adequate supply of RFG. This lack of certainty invites wide supply and price fluctuations that hurt both the suppliers and the consumer and do nothing to improve the air quality, which was the intent of the Clear Air Act. Continued uncertainty during the past oxy season forced Valero to shut down their \$300 million, 15,000 barrels per day, MTBE unit for part of the first quarter of this year due to lack of margin (see Attachment "B").

Need for Official Opt-Out Policy

Valero believes it is necessary that EPA have an official opt-out policy. While EPA has apparently proposed an opt-out policy on its electronic bulletin board, the final policy must be unambiguous on its face. If an area that had opted into the RFG program can show long term compliance with air quality standards, the EPA should have a clear policy and procedure for the state/area to request opt-out of the program. EPA should evaluate the request under this policy using sound scientific data and should ensure sufficient time to allow both the requesting area and the petroleum suppliers to reduce the RFG in the area without preventing significant market disruption. We understand that in EPA's proposal, the Agency states its belief that 30 days from the point of a final petition is a sufficient time to transition RFG out of an area opting out of the program. This conclusion is a major flaw in the proposal, given the necessity for adequate time in contracting, transportation, and other logistical concerns.

Need for a Flexible Opt-In Plan

Just as implementation of the federal RFG program requires flexibility for opt-outs, so too must it ensure flexibility for areas wishing to opt-in to the program. Valero believes the EPA should have a clear policy allowing attainment areas to opt-in to the RFG program if those areas believe it is the most cost effective way to maintain their attainment status. The EPA should clarify, by rule, that the states can opt-in attainment areas to the federal RFG Program using procedures provided in the Clear Air Act and should make clear in the rule-making that the states have independent authority under the Act to adopt the Federal RFG program in attainment areas through applicable provisions of their state implementation plans.

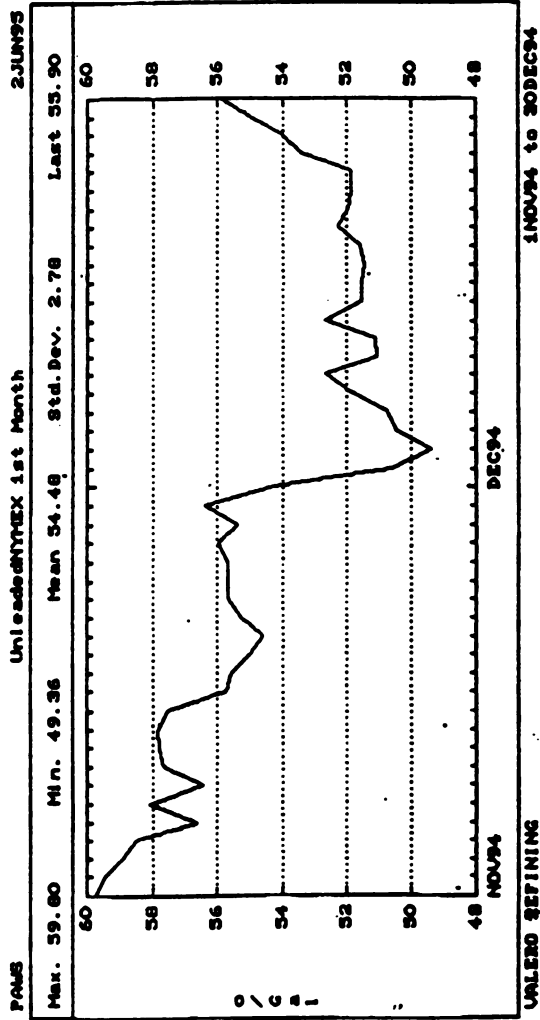
We believe the overall intent of the Clear Air Act amendments of 1990 was not only to improve air quality, but also to provide a mechanism to ensure the continued clear air in attainment areas. Growing areas that are near non-attainment run a very high risk of becoming non-attainment areas as they grow. In order to maintain

economic strength and growth while remaining in compliance with the Act, it would be prudent for such near non-attainment areas to request to opt-in to the RFG program voluntarily. Opting in would allow areas greater opportunities for continued economic growth and continued compliance with clear air standards.

We have already seen cities, such as Corpus Christi, Texas, exhibit a very high degree of interest in using reformulated gasoline in order to keep their cities in attainment status (see Attachment "C"). EPA should clarify the applicability of the federal RFG Program to cities like Corpus Christi at the earliest possible point.

In conclusion, Valero is not asking the government for any special consideration or any change in the law, nor are we asking for any economic protection from market forces or investment decisions we have made on our own. What we are asking however, is that there be some consistency and certainty in the regulations that are placed upon our industry so that we can know the ground rules and can make good business decisions for our shareholders. Once again, I would like to thank you for the opportunity to address this panel today and hope that this hearing can have some impact by helping to enhance the certainty of the regulatory environment in which we operate.

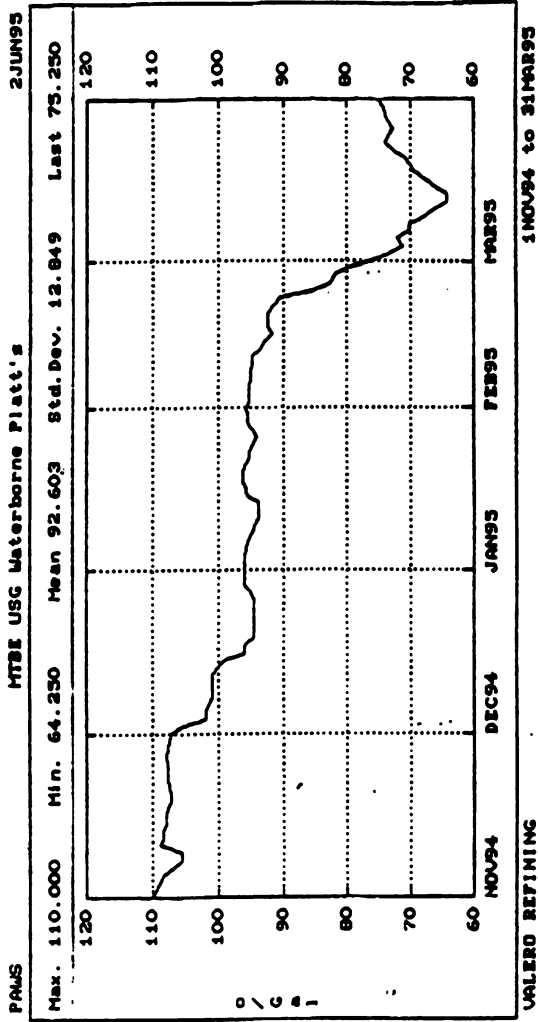
ATTACHMENT "A"



28 Counties in Pennsylvania ask to opt out on RFG

Price of RFG drops from 55.98¢/gallon on November 28, to 49.36¢/gallon by December 3, a dip of 6.62¢/gallon.

ATTACHMENT "B"



This graph shows the impact of the uncertainty of oxygenate requirements in the market resulting from the various state requests to reduce oxygenates and the EPA'S acquiescence and lack of a clear policy. The price for MTBE declined by 45.75¢/gallon from a high of \$1.10/gallon on November 1, 1994 to a low of 64.25¢/gallon on March 13, 1995.

Corpus Christi Caller Times - Monday - May 1, 1995

Reformulated gasoline

Corpus Christi apparently can't take the cure.
until it has the disease.

A smog-choked cartoon frog —the Smog Frog — was detailed last week to leap into action this late spring and summer when conditions seem ripe for pollution levels to violate air quality standards.

The frog, part of an advertising campaign, will urge residents to postpone pumping gasoline into their vehicles, refrain from cutting the yard with their lawnmowers — one can't imagine much persuasion might be needed there — share rides and generally cut down on the use of gasoline engines.

All those actions will help the city escape federal pollution oversight that could cost millions.

Corpus Christi, however, is prevented from taking one step which would demonstrably lower pollution levels: Voluntarily putting itself under mandate to use only reformulated gasoline, a cleaner-burning fuel.

The quirk in the federal law is that while the government can force a city to use reformulated gasoline, it cannot voluntarily get into a program. You can't take the cure until you get the disease.

The Smog Frog's aim is to keep the city out from under the federal Clean Air Act. The city has already violated the standard and is now one of the cities in Texas most in danger of falling into non-attainment status.

Non-attainment status means big bucks out of everyone's pocket, including vehicle owners. Houston drivers sent up a howl that was heard in the Legislature when they discovered that

the cost of repairs to cars that failed auto emissions tests ranged into the hundreds of dollars. The state postponed the plan, but the stations, under a reworked plan, are likely to be in operation soon.

The less costly option is to use reformulated gasoline, an option currently being explored by a commission set up by Mayor Mary Rhodes.

Changing the federal rules may mean the governor, with the support of local government, petitioning the Environmental Protection Agency.

Reformulated gasoline has raised questions in some quarters, including in this editorial space, because of complaints about nauseating fumes. Yet the use of the fuel has the support of major environmental watchdogs, including John Hall, chairman of the Texas Natural Resource Conservation Commission. Studies in several states now required to use reformulated gasoline have found no detriment to health from the fuel. In addition, major car manufacturers have put their stamp of approval on the fuel.

Bill Greehey, chairman of the Valero Energy Corp., whose Corpus Christi refinery is one of the largest producers of the fuel, says the higher price of the fuel was initially an obstacle. Now, he says the price has been dropping as the fuel gains wider use, with the difference now about two cents a gallon.

The benefits of use of the fuel now appear to outweigh whatever detriments there might be. But it's preventative medicine that's seemingly out of reach.



Alex Urzado, a truck driver with Benefield Distributing Co., delivers the first truckload of reformulated gasoline to the

Texas Department of Transportation Friday. County vehicles have switched to the cleaner-burning fuel.

By Tanner/Caller Times

► ENVIRONMENT

Local Transportation department vehicles to use reformulated fuel

Switch said to be part of effort to keep city off ozone danger list

- City vehicles could be switched to reformulated gasoline.
- The Transportation department already is using alternative fuels.
- Officials fear tighter clean air laws could lead to layoffs.

By STEVE STEIN
Caller Times

Sending a message about the importance of clean air to the community, the district office of the Texas Department of Transportation announced Friday that its Nueces County fleet is switching to cleaner-burning reformulated gasoline.

Tom Word Jr., district engineer at the Corpus Christi-based office of the Texas Department of Transportation said that the switch to the

Reformulated gas

- Drops total toxicity by about 20 percent.
- Reduces benzene, a carcinogen, by as much as 24 percent.
- Decreases carbon monoxide by as much as 13 percent.
- Reduces sulfur oxides by 11 percent.
- Decreases damaging engine deposits.

Caller Times

more expensive reformulated gasoline is part of an effort to help prevent the city from being designated and penalized as an ozone pollution non-attainment area by the Envi-

ronmental Protection Agency.

State officials said that they have not encountered health-related complaints about reformulated gasoline as have officials in a few other states. According to some research, toxic pollutants from automotive exhaust decrease significantly when reformulated gasoline is used.

Meanwhile, Corpus Christi officials said Friday that the city's fleet of more than 1,400 vehicles, including about 200 police cars, could be switched to reformulated gasoline if the price is right. Reformulated gasoline costs between 3 and 5 cents more per gallon in areas where it is required, such as Houston and Dallas.

Bill Hennings, deputy city manager, said that when the city advertises

Please see B3B3B3B3/B14

GASOLINE

FROM PAGE 29

next week for bids on a new contract to provide fuel for city vehicles, it will ask for bids on reformulated gasoline and see how the price compares with conventional gasoline.

"We will have to see what the price comparison is, and then we will have to make a judgment call," Hennings said.

Mayor Mary Rhodes has been an advocate of reformulated gasoline, for use by the public as well as government, as a tool to help prevent the city from receiving a non-attainment designation. There are no reformulated-gasoline pumps in Corpus Christi that are accessible to the public, according to local officials. However, motorists in several other U.S. cities have been using reformulated gasoline to meet federal clean air requirements since the beginning of the year.

To avoid EPA restrictions such as the Houston area is facing, Corpus Christi cannot exceed the federal ozone standard at the same air quality monitoring site four times in a span of three consecutive years. The city surpassed allowable air quality standards once in 1993 and once in 1994. The violations were at two different monitoring sites.

A designation as a non-attainment zone would restrict growth and production at area refineries which eventually could lead to layoffs in several sectors, according to growing numbers of city and business officials. Motorists also would face added costs to meet vehicle emissions standards if Corpus Christi is designated as non-attainment, according to state officials.

Valero Energy Corp.'s refinery in Corpus Christi, which employs about 300 people, is one of the nation's largest suppliers of reformulated gasoline. Local CITGO operations spokesman Chuck Cazales announced Friday that, because of poor market conditions, CITGO no longer is producing reformulated gasoline at its Corpus Christi refinery.

CITGO continues to produce reformulated gasoline at its operations in Houston and Lake Charles, La., and is now making a cleaner-burning, low-sulfur gaso-

line in Corpus Christi. Cazales said, if market conditions warrant, CITGO's Corpus Christi refinery could again produce of reformulated gasoline, he said.

A distributor operating in this area, Sun Coast Resources Inc., contracted with Valero to supply the first 3,600-gallon shipment of reformulated fuel that went into a Department of Transportation storage tank on Friday, Word said.

The cost of the fuel was 3 to 5 cents more than conventional gasoline, according to officials with the Transportation department. About 133 vehicles in the department's Nueces County fleet will be affected by the switch to reformulated fuel.

Of the 133 vehicles, 42 have been converted to one of two alternative fuels, compressed natural gas and liquefied petroleum gas. But because alternative fuel systems provide limited driving range, these cars also use gasoline. The department's goal is to have 90 percent of its vehicles operating on alternative fuels, which does not include reformulated gasoline, by 1998. At present, more than 30 percent of the district's fleet operates on alternative fuels.

The Transportation department says that the extra costs associated with reformulated gasoline are minimal compared with the potential costs of operating in an ozone non-attainment area, Word said.

"We strive to be environmentally sensitive in all the work we do," he said. "The real benefit is helping to contribute in cleaner air."

Hot, still days are the most likely for ozone pollution, according to state officials. On the so-called "Ozone Action Days," or days when an ozone pollution alert has been issued, the Transportation department plans to find ways to avoid adding to low-level ozone pollution.

Local Valero spokesman Ben Grimes said Friday that the market for reformulated gasoline has improved in recent weeks. Almost 100 percent of the gasoline produced at Valero's refinery in Corpus Christi is reformulated, Grimes said.

Valero's Corpus Christi refinery is operating at about capacity, Grimes said, adding that demand has been high, in part, because of reduced supplies.

Mr. BARTON. Thank you, sir.

We will now welcome Mr. Dineen's testimony. A summary in 5 minutes.

TESTIMONY OF EDWARD J. DINEEN

Mr. DINEEN. Thank you. My name is Ed Dineen. I'm a Vice President with ARCO Chemical Company. ARCO Chemical is the world's largest producer of oxygenates, providing MTBE and ETBE to refiners in North America, Europe, and Asia. We have been producing oxygenates since 1969 and have major production facilities in the United States and Europe.

MTBE has been widely used in gasoline since 1979 providing excellent fuel performance and significant public health benefits. Oxygenates were first used to help reduce vehicle emissions of carbon monoxide in Colorado in 1987. The success of this program and the growing recognition of the benefits of oxygenates led to similar efforts in other western states and ultimately to the nationwide oxy fuels and RFG programs in the Clean Air Act.

This has not been an effort unique to the U.S. Oxy fuel programs are being used in areas as diverse as Mexico City, Korea, France, Finland and Thailand to mention a few.

Oxygenated fuels provide immediate benefits without any need for changes in engine technology or fuel distribution systems and reduce every major criteria air pollutant as well as airborne toxics like benzene. These pollutants present various health hazards ranging from eye irritation to asthma to heart disease and certain forms of cancer.

The emission reductions will benefit all of us, but particularly will help the more sensitive members of the population.

In addition to these primary public health benefits, MTBE and other oxygenates also help meet other national goals. Over 80 percent of the oxygenates used in the U.S. come from domestic natural sources, displacing the need for imported gasoline and crude oil by nearly 200,000 barrels per day.

The use of cleaner burning gasolines has other advantages for consumers. Compared to programs like employee trip reduction and enhanced inspection and maintenance, the use of RFG does not force a change in life style habits.

In November 1992, the oxygenated fuels program was implemented nationwide. The results were impressive: a 90 percent reduction in the number of violations of the carbon monoxide standard in those areas. The introduction of RFG this January has been well received. There have been a few problems in a couple of areas, but given the magnitude of the program, covering 30 percent of the U.S. gasoline pool, and the lack of information available to the public, the concerns that have surfaced are understandable. Let me address these in order.

Number one, price. After some isolated sharp increases in the early weeks, we have seen the privacy differential between RFG and conventional gasoline between the initial estimates of 3 to 5 cents a gallon or less. In addition, the RFG program basically expanded the U.S. gasoline pool by about 5 percent. This has the impact through simple supply and demand fundamentals of lowering the gasoline prices to the consumer.

Fuel economy. Years of studies have shown oxygenates to have minimal impact on fuel economy, however both the oxy fuel and RFG programs were implemented in the winter. The combination of fuel volatility changes to ensure better cold weather starting, longer engine warm-up times, and poorer road conditions can result in as much as a 15 percent decline in fuel economy in the winter. Because of the media attention, it is understandable that consumers would associate this loss in fuel performance with the new program.

Engine performance. The major U.S. automakers have endorsed the use of RFG and have recommended its purchase to new car owners. Extensive testing since the late 1970's have shown MTBE to perform effectively in all engines with no concerns about materials found in fuel systems or overall performance.

Importantly, in addition to the car companies, manufacturers of small engines used in chain saws, lawnmowers and snowmobiles and other consumer groups have studied and confirmed the good performance of RFG fuels.

Health complaints. As a major producer, we have been most concerned by reports that have attributed certain health ailments to the use of MTBE. While these complaints have been limited, our industry and the health agencies have taken them seriously and responded immediately.

I am pleased to report that all of these studies, including the most recent study by the Department of Health in Wisconsin, have shown no connection between MTBE and these ailments. I want to emphasize the fact that most areas of the country, from Boston to Dallas to Los Angeles, even here in the Washington, D.C. area, introduced RFG this year with little if any public concerns.

As a related point, I would like to note the amount of effort that has been put into researching the safety of MTBE. Health testing of MTBE began in 1969 and over 44 studies during the 1970's and 1980's have demonstrated the product to be safe.

There is the potential that additional studies may yet be required by the EPA. We understand and support the need to do the research necessary to ensure the safety of the public. But we believe the work already done substantiates the safe use of MTBE in gasoline.

One lesson that we have learned is that both industry and EPA need to do a better job of informing the public when implementing major environmental initiatives like the RFG program. The introduction of RFG to millions of Americans has been a major success, yet there are still efforts to change the program to satisfy special interests or to pacify misdirected complaints. These efforts could undermine the overall program. Everyone, consumers, elected officials, industry, government administrators, and the general public will lose if this happens.

We believe there is a role for all oxygenates in the program: MTBE, ethanol, and ETBE. Particularly, we believe that removing roadblocks to ETBE use can ensure equal access to the market without the need for guaranteed market shares or special exemptions.

I would like to support the concerns of others from industry about the need for market stability and certainty. Our industry has

invested billions of dollars to provide the oxygenates needed to provide RFG. These investments are undermined when rules are changed or not enforced a few months after start-up.

Mr. BARTON. Can you summarize?

Mr. DINEEN. In closing, let me emphasize that the introduction of the RFG program has been very successful with a limited number of concerns being driven largely by the lack of information and a spread of misinformation by the media.

RFG is providing important public health benefits to millions of Americans in a cost-effective and convenient way. We feel more states could utilize this program if given the flexibility by EPA. There should be an easier way to use RFG to help areas from falling into noncompliance.

Congress should be proud of the fact that our country is leading the way in oxygenates and fuel reformulation to improve our environment. The United States has the cleanest, lowest cost motor fuels in the world. We should recognize this technological and societal strength and reaffirm the soundness of the program.

Thank you.

[The prepared statement of Edward J. Dineen follows:]

PREPARED STATEMENT OF EDWARD J. DINEEN, VICE PRESIDENT, ARCO CHEMICAL COMPANY

Good afternoon, I am Ed Dineen, Vice President, Worldwide Co-Products and Raw Materials with ARCO Chemical Company. In this position I have responsibility for ARCO Chemical's global MTBE business. ACC is the largest producer of oxygenates used in clean fuel programs around the world. We provide both methanol-based MTBE, (methyl tertiary-butyl ether) and ethanol-based ETBE, (ethyl tertiary-butyl ether) to refiners in North America, Europe and Asia. We have been producing oxygenates for use in gasoline since 1969 and have major production facilities in the US and Europe, including the largest MTBE unit in the world located in Channelview, Texas.

MTBE has been widely used in gasoline since 1979, providing excellent fuel performance and significant public health benefits. As one of the innovators in oxygenate technology, we have conducted extensive testing on the performance and use of oxygenates in gasoline and were among the first to discover the emission-reduction properties of these fuels.

Oxygenates were first used to help reduce vehicle emissions in Colorado in 1987 as part of that state's effort to meet the air quality standards for carbon monoxide, a major health threat to millions of Americans suffering from heart disease and other ailments.

The success of this program and the growing recognition of the benefits of oxygenates led to similar efforts in other western states and ultimately to the nationwide oxy fuels and RFG programs in the Clean Air Act. This has not been an effort unique to the U.S. Oxygenated fuels are used in numerous countries. Specific programs in areas as diverse as Mexico City, Korea, Finland, Thailand, Malaysia, to mention a few, are using the benefits of oxy fuels to help clean the air in these locations.

The benefits of using oxygenates in gasoline touch a number of areas, including public health, the environment and alternative energy use. The success of the early oxygenate programs, targeting carbon monoxide, dramatize one of the major advantages of these fuels: specifically, they provide immediate benefits, without the need for any changes in engine technology or fuel distribution systems. The improvements in engine and fuel system design by US automakers have led to significant reductions in vehicle emissions, these technological changes will take years to have their full impact because of the gradual turnover in the on-road vehicle fleet. However, clean fuel programs, like RFG, provide an immediate benefit by improving fuel combustion, thus reducing pollutants from every vehicle on the road, with the first fill-up.

The use of oxygenates in gasoline helps to reduce every major criteria air pollutant: carbon monoxide, ozone forming hydrocarbons, NOx, sulfur oxides, particulates and lead. These pollutants present various health hazards, ranging from eye irrita-

tion to asthma to heart disease and certain forms of cancer. The use of RFG, the use of clean fuels has also begun to reduce benzene, a known human carcinogen which is present in emissions.

The health impact of these improvements will be great. It will help the more sensitive members of the population, including children and senior citizens.

In addition to these critical environmental benefits, other oxygenates also help meet other major goals in the use of foreign oil supplies. Over 80% of the oxygenates from domestic natural resources, displacing crude oil by nearly 200,000 barrels per day, also help meet alternative energy targets for fueling vehicles. The Congressional Research Service has and will have for at least the next decade the nation's dependence on foreign oil currently being considered.

The use of cleaner burning gasoline compared to programs like Emission Control Maintenance, the use of RFG does not have inconveniences like waiting in line at a gas station at a time when the car is needed for their personal lives.

In November, 1992 the EPA announced a program to help reduce harmful air pollution. This program was introduced. The results were that the number of violations of the carbon monoxide standard was used for the first time.

As with the winter time air quality has been well regulated but given the magnitude of the lack of information that has surfaced are not.

Price—In some areas there has been a sharp price increase after this initial period. In conventional gasoline areas, as the market patterns present, the program basically has not passed through to the consumer. That is, the consumer is not getting the benefit.

Fuel economy—The programs were worse than the current better regulations and more than a 15% decline in implementation of fuel performance.

In response to the fact that these figures are not as good as the consumption figures wide during the implementation of oxygenated fuels.

Engine performance—The engine performance has not been as good as the current materials performance engine components, a study representing the use of RFG.

The American Petroleum Institute has been working on this.

Health complaints—As a major producer, we have been most concerned by reports in the news media and from certain consumers that are attributed to the use of MTBE, ailments ranging from headaches to eye-irritation and nausea. Let me emphasize to you that while these complaints have been limited to only a few of the areas that have used MTBE, our industry has taken them seriously and responded immediately, in cooperation with the US EPA and other health agencies, to study them thoroughly. I am pleased to report that all of these studies, including the most recent study by the Department of Health in Wisconsin, have shown no connection between MTBE and these ailments.

I want to emphasize the fact that most areas of the country, from Boston, to Dallas to Los Angeles, even here in the Washington, DC area, introduced RFG this year with little, if any, public concerns. In these few areas that experienced introductory problems, the cause had little to do with the fuel itself and more to do with the prevalence of news media stories in these areas, coupled with the lack of public information on RFG.

As a related point, I would like to note the amount of effort that has been put into researching the safety of products like MTBE. Health testing of MTBE began in 1969, and over 44 studies during the 70's and 80's have demonstrated the product to be safe.

Between 1987 and 1992 our industry spent over \$3.5 million to conduct additional testing on MTBE in animals to insure that the widespread increased use of oxygenates in clean fuel programs would not present new health risks for the public. Since that time an additional \$4 million has been spent addressing acute health issues.

Our industry has embarked on additional long term health studies, estimated to cost another \$2.8 million over the next three years, to further support the already extensive data base which shows MTBE to be safe for use of MTBE in gasoline. There is the potential that additional studies may yet be required by the EPA. We understand and support the need to do the research necessary to ensure the safety of the public. We believe the work already done substantiates the safe use of MTBE in gasoline is safe and that there is also a point where the expenditure of scarce research dollars benefits fewer and fewer people.

One lesson from this is that both industry and the US EPA need to do a better job of informing the public when implementing major environmental initiatives like the RFG program. ACC for its part has supported efforts by the Clean Fuels Development Coalition and the Oxygenated Fuels Association in distributing information packets, placing local informational ads and setting up a hotline for consumers to call for additional information. Our experience in other areas has shown such information, along with the benefit of time, is most effective in addressing negative concerns.

We feel the introduction of the RFG program to tens of millions of Americans this year has been a major success. Better dissemination of information to consumers would have helped. But experience has shown people that these fuels perform well and we expect the improvements in air quality to be as dramatic as those seen with the wintertime carbon monoxide program.

The most serious problem the RFG program faces is from those who would change it for political reasons or in a knee-jerk reaction to complaints from misinformed media or a few consumers. Efforts to continue to support the administration's Renewable Oxygen Requirement will only create additional uncertainties in the marketplace and encourage others with special interests to seek their own favors. From our perspective, the ROR is not needed to ensure competition in the oxygenates marketplace. In 1989, in an effort to widen the choice of oxygenates available to refiners, we began the process of commercializing the use of ETBE in gasoline. This ethanol-based oxygenate has higher octane and lower volatility than MTBE and is not limited by the distribution and blending problems that continue to hamper the wider use of ethanol in gasoline. We firmly believe that full commercialization of ETBE can ensure equal access to the oxygenate marketplace in reformulated gasoline for ethanol producers without the need for guaranteed market shares or special exemptions.

I would also like to support the concerns of others from industry about the need for market stability and certainty. Our industry has invested billions of dollars to provide the oxygenates needed to make RFG. These investments are undermined when rules are changed or not enforced a few months after start-up.

We need assurances that these industries will not risk losing the capital invested to implement the program. Not only is the credibility and confidence in public officials at risk, but so is the benefits that would accrue to the public from the cleaner air this program promises to provide.

tion to asthma to heart disease and certain forms of cancer. With the introduction of RFG, the use of clean fuels has also begun to reduce other air borne toxics like benzene, a known human carcinogen which is present in evaporative and exhaust emissions.

The health impact of these improvements will benefit all of us, but particularly will help the more sensitive members of the population: young children, asthmatics and senior citizens.

In addition to these critical environmental and public health benefits, MTBE and other oxygenates also help meet other major national goals, specifically reduction in the use of foreign oil supplies. Over 80% of the oxygenates used in the US come from domestic natural resources, displacing the need for imported gasoline and crude oil by nearly 200,000 barrels per day. Blending oxygenates in gasoline can also help meet alternative energy targets more quickly than converting to neat-fueled vehicles. The Congressional Research Service estimates that oxygenated fuels have and will have for at least the next 25 years, a much greater impact in reducing the nation's dependence on foreign oil supplies and all of the alternative fuels currently being considered.

The use of cleaner burning gasolines has other added advantages for consumers. Compared to programs like Employee Trip Reduction and enhanced inspection and maintenance, the use of RFG does not force a change in life-style habits or impose inconveniences like waiting in line at state inspection centers. This is a major advantage at a time when the public is concerned about more government intrusion into their personal lives.

In November, 1992 the Oxygenated Fuels program was implemented nationwide to help reduce harmful wintertime carbon monoxide pollution. Despite problems a few problems, this program was well received in most of the 36 areas where it was introduced. The results were even more impressive, a 90% reduction in the number of violations of the carbon monoxide air quality standards in areas where this fuel was used for the first time.

As with the wintertime oxy-fuels program the introduction of RFG this past January has been well received. There have been some problems in a couple of areas, but given the magnitude of the program covering 30% of the U.S. gasoline pool, and the lack of information available to the public about the program, the concerns that have surfaced are understandable. Let me address these in order.

Price—In some areas, during the early weeks of the program, there was a fairly sharp price increase at the consumer level of up to 10¢/gal in some areas. However, after this initial phase, we have seen the price differential between RFG and conventional gasoline close to the initial estimates of 3-5¢/gal, and even less in some areas, as the marketplace has been able to adjust to the new supply and demand patterns presented by this program. What hasn't been mentioned is that the RFG program basically expanded the U.S. Gasoline pool by about 5%. This has the impact through simple supply-demand fundamentals of lowering gasoline prices to the consumer. That is, the real cost of the program has likely been overstated.

Fuel economy—Years of studies have shown oxygenates to have minimal impact on fuel economy, generally less than 2-3%. However, both the oxy fuels and RFG programs were implemented in the winter. Wintertime fuel economy is generally worse than the Fall and Summer. The combination of fuel volatility changes to ensure better cold weather starting, longer engine warm-up times, poorer road conditions and more frequent use of vehicles for shorter trips can result in as much as a 15% decline in fuel economy. Because of the media attention and the wintertime implementation, it is understandable that consumers would associate this loss in fuel performance with this new program.

In response to consumer concerns, additional studies have been conducted, verifying these figures, the most recent by the EPA in Wisconsin. A review of fuel consumption figures for the state of New Jersey, where oxygenates were in use statewide during the winter since 1992, provides the broadest confirmation of the small impact oxygenates have on fuel consumption.

Engine performance—The major US automakers have endorsed the use of RFG and have recommended its purchase to new car owners. Extensive testing since the late 70's has shown MTBE to perform effectively in all engines with no concerns about materials found in fuel systems or overall performance. While certain high performance engines, especially those used in snowmobiles, may require minor adjustments, a study by the Portable Power Equipment Manufacturers Association, representing the 2-cycle engine industry, has found no performance problems from the use of RFG.

The American Automobile Association, representing nearly 40 million car owners, has endorsed RFG as an effective way to reduce air pollution without affecting the ability of Americans to enjoy the freedom of their automobiles.

these emissions can worsen ozone smog depending on the mix of pollutants and climatic conditions in a particular locality. Immediate action is needed on the rule because companies are already beginning to make investments to comply with it. It simply doesn't make any sense to pay these costs which consumers will ultimately have to bear when the result may be dirtier air.

Second, the administration should give up mandating ethanol or otherwise manipulating the marketplace to boost the sales of any single fuel over others. I've got some comments on that, but as you are not covering that, I will skip ahead.

Finally, EPA needs to establish an orderly procedure for areas which have opted-in to leave the RFG program. The last-minute opt-outs last year were unfair to companies who have invested millions of dollars to bring new fuel to those markets. Last week, the agency proposed an opt-out procedure, but it is not adequate. And I hope you will come back and give me an opportunity to respond to what Assistant Administrator Nichols said. I didn't think it was either open-minded or thoughtful, and I'm concerned about it. It doesn't provide companies with nearly enough lead time to change fuels.

Three components must be part of the opt-out procedure: there must be a formal request in writing from the governor; the request should be published in the Federal Register as a rulemaking inviting public comments; and EPA should evaluate the impact of the request on the RFG program and make any necessary adjustments to it before the request is granted.

Every opt-out decision should take into account both the investments made by the companies and the logistics of changing fuels. Companies must have time to adjust.

In conclusion, the oil industry got RFG off to a good start and continues to support its use where cost-effective. However, the improvements I've outlined are needed to make the RFG program fairer, more flexible, less costly, and more effective. And I finished within 5 minutes.

[The prepared statement of Charles J. DiBona follows:]

PREPARED STATEMENT OF CHARLES J. DiBONA, PRESIDENT, AMERICAN PETROLEUM INSTITUTE

Thank you for the opportunity to talk about RFG.

I want to discuss where the RFG program stands today—then talk about how we can make the program operate more smoothly and cost-effectively in the future.

Despite a few rough spots, the RFG program has been successfully implemented. U.S. oil companies have worked hard to make this happen.

They've spent billions of dollars to modify refineries to make RFG. They've spent millions on research. They've secured the huge supplies of oxygenates required and dealt with the uncertainty of EPA's contested ethanol mandate. They've made last-minute adjustments when three states decided that they didn't, after all, want several counties to participate in the program. They've gotten RFG to market on time despite the unanticipated problems caused when flooding shut down a major pipeline in Houston in the Fall. And, during the rollout of RFG—when concerns were voiced about the new fuel in a few places they've answered those questions and supported RFG, when the government responsible seemed unprepared or reluctant to do so.

Most of the questions about RFG have been resolved. RFG does cost more to make, but consumers in most places are only paying about a nickel more per gallon—about what EPA estimated. RFG is providing about one to three percent fewer miles per gallon—but this was expected given the fuel's lower energy content. And

RFG does not increase health risks. Specifically, as a recent state health study concluded, it's not responsible for the alleged health problems attributed to it.

Currently, RFG comprises about one-fourth of the gasoline sold in the United States. I want to emphasize that RFG may *not* be cost-effective everywhere. But it's clearly cost-effective for areas with the most severe ozone smog problems and much more affordable, practical and convenient than alternative fuels.

The oil industry will continue to try to make and market RFG where it's required. However, a number of improvements in the program are needed.

First, EPA should rescind its rule that RFG reduce nitrogen oxide emissions in the summers beginning in the year 2000. This reduction goes well beyond the requirements in the Clean Air Act which only prohibit an increase. Moreover, the environmental benefits of reducing nitrogen oxide emissions are questionable. EPA itself has recognized that reducing these emissions can *worsen* ozone smog, depending on the mix of pollutants and climatic conditions in a particular locality. Immediate action is needed on the rule because companies are already beginning to make investments to comply with it. It simply doesn't make any sense to pay these costs, which consumers will ultimately have to bear, when the result may be dirtier air.

Second, the Administration should give up mandating ethanol or otherwise manipulating the marketplace to boost the sales of any single fuel over others. EPA is wrong to want to appeal the court's decision rejecting the renewable oxygenate rule. That rule can't be justified, and an appeal would prolong the uncertainty for all parties involved. Back when the 1990 Clean Air Act amendments were being considered, the oil industry strongly opposed the 2 percent oxygen requirement for RFG, which can be met by blending ethanol. We said tell us how much polluting emissions should be reduced. Don't dictate the recipe for making the fuel. We want to make the best fuel we know how, not "government gas." The fact is that today a lot of ethanol is being used in RFG. A mandate is completely unjustified.

Finally, EPA needs to establish an orderly procedure for areas, which have opted-in, to leave the RFG program. The last minute opt-outs last year were unfair to companies who had invested millions of dollars to bring the new fuel to those markets. Last week, the agency proposed an opt-out procedure, but it's not adequate. For example, it doesn't provide companies with nearly enough lead-time to change fuels.

Three components must be a part of the procedure: There must be a formal request in writing from the governor; the request should be published in the *Federal Register* as a rulemaking, inviting public comment; and EPA should evaluate the impact of the request on the RFG program and make any necessary adjustments to it before the request is granted. Every opt-out decision should take into account both the investments made by companies and the logistics of changing fuels. Companies must have time to adjust.

In conclusion, the oil industry got RFG off to a good start and continues to support its use where cost-effective. However, the improvements I've outlined are needed to make the RFG program fairer, more flexible, less costly and more effective.

Mr. BARTON. Thank you, Mr. DiBona and we appreciate your timeliness.

We will now recognize Mr. Samuel T. Ewing who is with Ashland Petroleum Company and here today representing the National Petroleum Refiners Association.

Mr. Ewing.

TESTIMONY OF SAMUEL T. EWING

Mr. EWING. Good morning, Mr. Chairman. I am Vice President of Regulatory Fuels for Ashland. I have been involved in both the RFG regulatory process and the development of Ashland's RFG refinery and marketing strategies. Today I appear before your subcommittee representing the NPRA.

The RFG program is a major component of the 1990 Clean Air Act amendments. Its successful introduction this past January was, and continues to be, a high priority for the domestic refining industry. While there has been some concern raised about various aspects of the program, we believe it will achieve substantial improvements in air quality.

Now, it is important that the EPA, the refining industry, and the Congress assess the strengths and weaknesses of the program to ensure its continued success. As we all make this assessment, we must be mindful of the costs of this regulatory program and work together to make wise environmental investments.

The main points I would like to address this morning are current issues such as the ethanol mandate, foreign refiner baseline, opt-outs and future issues that require additional action. I would also request the subcommittee include my written statement as part of the official hearing record.

Mr. BARTON. Without objection.

Mr. EWING. The final rule for reformulated gasoline was the result of very extensive negotiated rulemaking called Reg Neg. NPRA was directly involved in this process and signed the formal agreement in principle which established the basic framework for the final regulation.

One of our principal goals is to achieve a level of certainty in which refiners could begin to plan invest and construct the necessary equipment to meet the new requirements. In spite of the resolve of the domestic refining industry to successfully implement the RFG program, politically motivated amendments to the final program, plus a ponderous regulatory process, created tremendous obstacles in meeting program requirements and deadlines.

With regard to ethanol, NPRA is pleased with the recent ruling by the Court of Appeals for the District of Columbia Circuit which held that EPA lacked authority to promulgate a rule imposing an ethanol mandate for RFG.

While several NPRA members use ethanol as their oxygenate of choice, NPRA does not support the government mandating gasoline components.

Now, there are indications the administration intends to pursue further legal and legislative avenues to revitalize this unwarranted subsidy for the ethanol industry. NPRA also continues to oppose allowing foreign refiners to establish their own baselines and believes this would pose a threat to our national environmental standard.

On opt-outs, as you know, since the introduction of the RFG program, several states have requested to opt-out areas of the RFG programs. Unfortunately, the RFG regulations issued in December of 1993 did not include procedures for opt-out.

The last-minute stay of the RFG requirements in some areas left the petroleum industry exposed to severe economic losses and ongoing uncertainties. While EPA has finally proposed an opt-out procedure, we believe it further exposes the refinery industry to possible future economic losses.

NPRA continues to be concerned that many of the refiner baselines required for compliance with the RFG and antidumping program have not yet been approved by EPA. NPRA believes that EPA must review and make adjustments to the enormous reporting and recordkeeping requirements to the RFG program. The various sampling and testing provisions of the RFG program adds complexity and confusion in the marketplace. They are expensive and add no environmental benefit.

Future phases of the RFG program, such as the introduction of the complex model in the year 2000 Phase II standards, will be

more challenging and costly. NPRA believe that the Phase II performance standards need to be reassessed to assure that future requirements are based on current and more reliable air quality data and accurately reflect the risk and benefits posed by emissions.

Of particular concern is the Phase II NO_x reductions. EPA's requirement to reduce NO_x emissions by 5.5 percent by the year 2000 was not part of Reg Neg. The Clean Air Act establishes a no-NO_x increase standard which the industry accepted. Sound science and cost-effectiveness should guide us in achieving NO_x reductions.

In conclusion, the refining industry has invested billions of dollars and will require billions more in refining and distribution facilities to produce future phases of RFG. The refining industry only asks that it continue to be allowed to provide RFG in the most cost-effective manner without artificial mandates, special treatment, and excessive regulatory compliance burdens.

Thank you.

[The prepared statement of Samuel T. Ewing follows:]

PREPARED STATEMENT OF SAMUEL T. EWING, ASHLAND PETROLEUM COMPANY ON
BEHALF OF THE NATIONAL PETROLEUM REFINERS ASSOCIATION

I. INTRODUCTION

Good morning. I am Samuel T. Ewing, with the Ashland Petroleum Company, a diversified corporation and leading independent refiner of gasoline and other petroleum products. As Vice President for Regulatory Fuels, I have been involved in both the RFG regulatory process and the development of Ashland's RFG refinery and marketing strategies. Today, I appear before your committee representing the National Petroleum Refiners Association (NPRA). NPRA is a national trade association whose membership includes virtually all U.S. petroleum refiners, large and small, as well as petrochemical manufacturers using processes similar to those in a refinery.

NPRA appreciates the opportunity to appear before the Subcommittee on Oversight & Investigations of the House Commerce Committee to discuss the Environmental Protection Agency's reformulated gasoline program. The RFG program is a major component of the 1990 Clean Air Act Amendments. Its successful introduction this past January was, and continues to be, a high priority for the domestic refining industry. While there has been some concern raised about various aspects of the program, we believe its introduction has been successful and will achieve substantial improvements in air quality. It is now important that the EPA, the industry, and the Congress assess the strengths and weaknesses of the program to ensure its continued success. As we all make this assessment, we must be mindful of the costs of this regulatory program and work together to make wise environmental investments.

II. THE RFG PROGRAM

The RFG program involves two phases of reformulation severity covering the periods 1995-1999 (Phase I) and year 2000 and beyond (Phase II). Phase I establishes performance standards requiring a 15 percent reduction in emissions of VOCs during the high ozone season, prohibits increases in NO_x emissions, specifies at least 2 percent oxygen and no more than 1 percent benzene content. All heavy metals including lead and manganese must be removed.

In addition to specifying RFG performance, the regulations require that the quality of conventional gasoline not deteriorate from 1990 levels. Also, by separate but related rulemakings, all gasoline must have a minimum level of detergent additives to keep engines clean, and lead will be banned from all gasoline as of January 1, 1996.

Phase I initially relied on a "simple model" approach in order to provide refiners with adequate time to fully reformulate gasoline. The simple model, applicable during the period 1995-1997, relies on vapor pressure, benzene and aromatics limits and a minimum oxygenate level. All other gasoline parameters are limited to each refiner's 1990 baseline values. Beginning in 1998, RFG must be certified based on

a complex model which incorporates VOC, NOx, and toxic emission impacts of eight gasoline quality parameters.

The Phase III RFG program significantly increases the severity of reformulation. Phase II requires a 25 percent reduction in VOC emissions, 5.5 percent reduction in NOx, and a 25 percent reduction in toxic emissions. Of most significance are the NOx reductions which will likely require large modifications to previously unregulated quality parameters.

To implement the RFG program, the domestic refining industry has had to change operating procedures, make plant modifications, and obtain new process equipment to achieve the new oxygenate, vapor pressure, and benzene specifications and emission reduction requirements. The Energy Information Administration (EIA) estimated that average production costs for Phase I RFG would be 4 to 6 cents higher than those for conventional gasoline. In testimony before the Commerce Subcommittee on Energy & Power last fall, EPA stated that the increased production and distribution cost of the new fuel would be 3 cents to 5 cents per gallon in 1995.

The cost of meeting Phase I simple model requirements represents only a small portion of the total cost of the reformulated gasoline program. Future expenditures and risks associated with meeting the Phase I complex model and the Phase H standards will increase well beyond those of the initial RFG program.

III. CURRENT RFG ISSUES: ETHANOL, FOREIGN BASELINE, AND OPT OUTS

The final rule for reformulated gasoline was the result of a very extensive negotiated rulemaking (Reg Neg) process. NPRA was directly involved in this process and signed the formal Agreement in Principle which established the basic framework for the final regulations. One of our principle goals was to achieve a level of certainty in which refiners could begin to plan, invest, and construct the necessary equipment to meet the new requirements.

In spite of the resolve of the domestic refining industry to successfully implement the RFG program, politically motivated amendments to the final program plus a ponderous regulatory process have created tremendous obstacles in meeting program requirements and deadlines. There were extraordinary delays in the issuance of the final RFG rule which was finally published less than a year prior to its effective date. The Administration's continual tampering with the RFG rule increased uncertainty in the refining industry. NPRA was especially concerned with the ethanol mandate and the foreign refiner baseline proposals, both of which were published after the final rule was issued. Neither of these proposals were agreed to during the Reg Neg process.

Ethanol

With regard to ethanol, NPRA is pleased with the recent ruling by the Court of Appeals for the District of Columbia Circuit which held that EPA lacked authority to promulgate a rule imposing an ethanol mandate for RFG. The court's undoing of the ethanol mandate should eliminate much of the uncertainty. While several NPRA members use ethanol as their oxygenate of choice, NPRA does not support the government mandating gasoline components. Mandates often result in unintended adverse consequences and high costs to refiners and consumers. We had hoped this recent court decision would close one of the chapters in EPA's book of uncertainty for the RFG program, but there are indications that the Administration intends to pursue further legal and legislative avenues to revitalize this unwarranted subsidy for the ethanol industry, which even EPA has admitted is harmful to the environment.

Foreign Refiner Baseline

NPRA has submitted comments to the U.S. Trade Representative's Office as it responds to Brazil's and Venezuela's challenge before the World Trade Organization that EPA's foreign refiner baseline requirement is discriminatory and violates U.S. obligations under the General Agreement on Tariffs and Trade (GATT). Venezuela's desire to set a baseline less stringent than the statutory baseline was rejected during the Reg Neg proceedings. Allowing foreign refiners to establish their own baselines, which even EPA has said would be difficult if not impossible to verify, would pose a threat to our national environmental standards. We believe each nation is entitled to take measures to exclude imports which do not meet the environmental standard set for its domestic industry.

Opt Outs

As you know, since the introduction of the reformulated gasoline program, several states have requested to opt out of the RFG program. As the effective date of the RFG program approached, non-attainment areas in Pennsylvania, Maine and New

York that had voluntarily opted in to the program requested that they be permitted to opt out. Unfortunately, the RFG regulations issued in December 1993 did not include procedures for opt out. EPA notified these states of the Agency's intent to grant their requests following a rulemaking process, and in the meantime stayed their RFG programs. NPRA members had in good faith expended significant effort and spent large sums of money to implement the RFG program in these and other covered areas. The last minute stay of the RFG requirements left the petroleum industry exposed to severe economic losses and ongoing uncertainties.

In general, the petroleum industry is not opposed to states being able to opt out of the program. However, if opt outs are permitted, they must be done in an orderly and structured way decided after a thorough, complete and open rulemaking process. The industry recommends that a Governor, not his designee, be required to formally submit any requests. While we are encouraged that EPA finally signed the proposal to establish an opt out process, it has taken more than five months since the first opt out request was made. This time-lag has again caused unnecessary uncertainty for the industry. Furthermore, the proposal falls short of providing the level of certainty required for the magnitude of investment involved and does not allow adequate time to adjust to changes required by RFG opt out decisions.

More recently the RFG program has come under the scrutiny because of some unsubstantiated RFG health and performance complaints by citizens. NPRA member companies worked with EPA, engine manufacturers, and oxygenate suppliers to address the specific concerns of citizens. Studies sponsored by the Agency and industry reported no link between reformulated gasoline and health problems, and were not able to identify unanticipated engine performance problems resulting from RFG use. The level of complaints have since diminished, but not disappeared. The industry is supporting ongoing investigation of these concerns.

IV. FUTURE ISSUES: BASELINE COMPLIANCE, RECORDKEEPING, PHASE II

Despite some initial uncertainties and consumer concerns, industry has successfully implemented the first phase of RFG. Subsequent phases of the program, i.e., introduction of the complex model and Phase II standards, will be more challenging and costly. To be successful, industry must have greater lead time and certainty, and should not be burdened with unnecessary regulatory requirements which provide little or no environmental benefit. As RFG costs increase and air quality improvements are realized, we should carefully re-examine the costs and benefits of further reformulation.

Baselines for Compliance and Anti-dumping

NPRA continues to be concerned that many of the refiner baselines required for compliance with the RFG and anti-dumping program have not yet been approved, and will be yet again reviewed, delayed, and modified by the Agency. Many refiners initiated the RFG program without knowing for certain the standards they must meet because their baselines were not yet approved. Some still are waiting for final approval while others are waiting for additional EPA action before the baseline review can be initiated.

Refiners may be facing additional uncertainty with respect to their baseline. We understand that after more than five months into the program, EPA's Office of Compliance has notified a number of refiners of its intent to audit the baselines developed and previously approved. These baselines were reviewed by EPA approved auditors and independent EPA contractors. NPRA is concerned about the excessive baseline review and, more importantly, about the potential reversal of agreed upon interpretations of the rules during the initial baseline approval process. Companies have reported inordinate costs to obtain baseline approval.

Enormous Bookkeeping & Recordkeeping Requirements

NPRA believes that EPA must review and make adjustments to the enormous reporting and recordkeeping requirements for the RFG program. The various sampling and testing provisions of the RFG program add complexity and confusion in the marketplace and raise additional concerns. Quarterly batch-by-batch reporting and independent sampling and testing for each batch of gasoline add unnecessary burdens and costs. The test methods and enforcement tolerances rely on unproven rather than industry accepted methods and do not reflect test accuracies. All of these requirements are expensive and add no environmental benefits.

Phase II Requirements

Many unanswered questions remain regarding future requirements of the RFG program particularly those that relate to Phase II. NPRA members are committed to the continued success of the RFG program. However, considering the initial re-

sponse to RFG by some consumers, NPRA believes that Phase II performance standards need to be reassessed to ensure that future requirements are based on current and more reliable air quality data, and accurately reflect the risks and benefits posed by emissions.

Of particular concern is the Phase II NOx reduction. EPA's requirement to reduce NOx emissions by 5.5% for year 2000 gasoline was not part of the negotiated rule-making process. The CAA statute established a "no NOx increase" standard which the industry accepted. We need to assure the use of sound science and cost effectiveness in achieving NOx reductions. The contribution of motor vehicles to NOx emissions is decreasing compared to stationary sources. Other sources may provide less costly reductions. A National Academy of Sciences report on ozone formation concluded that in some areas of the country NOx reductions could actually increase ozone due to differences in background VOC and NOx levels, meteorology, and air chemistry.

We are sure that the Subcommittee is aware of the August 1993 National Petroleum Council study which reports that the U.S. refining industry will incur environmental expenditures in excess of its \$31 billion book value. Additional NOx requirements could substantially increase the cost to produce reformulated gasoline. We note that the NPC study does not even contemplate a cost for NOx reduction for year 2000 gasoline that would require extensive new desulfurization capacity and billions more in capital investment.

V. CONCLUSION

While we have mentioned this several times already in our statement, CAA regulatory programs, such as the reformulated gasoline program must provide certainty to the regulated industry. We are concerned that many new extremely technical and complicated fuel initiatives, such as the 49 state car program, will only divert EPA resources from assisting the industry to implement the RFG program. The RFG program requires continued support from EPA.

The refining industry has invested billions of dollars and will require billions more investment in refining and distribution facilities to produce RFG. As a result of these capital investments and the higher operating costs associated with manufacturing and distributing RFG, the cost of making reformulated gasoline is higher than it is for conventional gasoline. No one knows for certain the ultimate cost to consumers because gasoline prices reflect not only manufacturing and transportation costs, but also crude oil costs, supply, demand, and local market conditions. However, the clean fuels option offers a more economical approach to air quality improvement than most of the clean burning alternate fuels. The refining industry only asks that it continue to be allowed to provide RFG in the most cost effective manner, without artificial mandates, special treatment, or excessive regulatory compliance burdens. Now is the time for future program requirements to be assessed through a process that includes the entire refining industry, EPA, and Congressional representation that ensures scarce resources will not be spent unnecessarily or unwisely.

We appreciate the opportunity to testify before the Subcommittee and look forward to working with you and EPA to make the RFG program a continued success.

Mr. CRAPO [presiding]. Thank you, Mr. Ewing.

Since I was not here for most of the testimony of this panel, I am going to forgo my questions and, Mr. Wyden, you have a wide open field here.

Mr. WYDEN. I thank you. You all seem to be working hard to hold down your costs, you know, as producers, and yet as we talked about earlier with the first panel, there seems to be a significant difference between the wholesale price and the retail price of reformulated gas.

I would be interested in whether you all as producers have any theories to what is going on out there and what's behind it. Would anybody like to start? I've never seen this crowd to be so bashful.

Mr. DiBONA. Well, I don't know. The margins on gasoline have been pretty tight over the last few years including the introduction of the reformulated gasoline. The margins are not large. We don't

keep price data at the API. We don't collect any independent data. That is for antitrust reasons.

I am surprised that you think that there is a very large margin on reformulated gasoline. And I guess what we have to do is just find the data. I don't think the predicate to your question exists.

Mr. WYDEN. Well, Mr. Riggs of the Department of Energy talked about a 4 cent differential.

Mr. DiBONA. He talked about a 4 cent differential between the price of reformulated gasoline and the price of nonreformulated gasoline. And the estimates——

Mr. WYDEN. No, I asked him for the difference between wholesale and retail.

Mr. DiBONA. I thought that in his testimony, my understanding of his response to you was he was answering the question of the difference between the price of reformulated gasoline and nonreformulated gasoline. That was my understanding. You asked a question. He gave you an answer.

And then when you followed up with your next question, and he explained to you that the answer he had given to you was the difference between reformulated gasoline and nonreformulated gasoline. And the estimates of the cost of producing this have been in that range, around a nickel a gallon. So that was a consistent number.

Mr. WYDEN. We will sort this out, Mr. DiBona but, obviously, what I'm concerned about is the price differential between wholesale for RFG and retail for RFG. We'll sort it out.

Mr. DiBONA. It is the marketing mark-up, and that can be determined. We don't happen to collect the data here.

Mr. WYDEN. What we understood it to be was for RFG retail, 5 cents higher, wholesale 1 to 2 cents higher. So we will take a look at it.

Why don't we move on then to you Mr. Dineen. Your company makes both methanol- and ethanol-based RFG additives; is that correct?

Mr. DINEEN. That's correct.

Mr. WYDEN. From your testimony, it sounds like you all don't have much stomach for any ethanol mandate. Does ARCO believe that it can compete in the marketplace with its ethanol-based RFG additive without a mandate from the EPA?

Mr. DINEEN. We recognize we are competing with ethanol which has a subsidy. We believe the best way to get ethanol into the RFG market is via ETBE and we're working with Treasury along with a number of other companies to remove some administrative roadblocks that have made it difficult to produce ETBE and get it into the marketplace.

We think ETBE is a very effective product and can be an effective component of reformulated gasoline and that via that route, ethanol will get its reasonable share of that market without any needed mandates or guaranteed market shares.

Mr. WYDEN. Do the rest of the panel share this view with respect to an ethanol mandate? Mr. Smithers?

Mr. SMITHERS. Yes, we do. Number one, I think we need ethanol in the total oxygenate program in the U.S. We are not antiethanol. We are simply antimandate.

Mr. DiBONA. That's also the position of API. We brought the suit, along with NPRA, against the ethanol mandate. We have absolutely nothing against using ethanol in gasoline. And many of our members use it. We just believe they all ought to compete on an equal footing.

Mr. WYDEN. Let me ask just one other question of this panel. What do you think, as producers, ought to be the role for state prerogatives with respect to reformulated gas? Obviously, the governors have strong views on this matter. And we would be interested in your thoughts on what you think the state role ought to be.

Mr. DiBONA. Well, we believe that in places where they have the option to opt in, they ought to be permitted to do that in a formal, reasonable way, which gives people ample time to respond, and that there ought to be an equally formal procedure in opting out. We do not argue that people should be prevented from having that decision. It's just the procedures that they will need to follow.

We think that in many areas, not all, but in many areas, RFG is the most effective way, cost-beneficial way of achieving the SIP requirements. So we don't have any problem with the governors making that decision. What we are concerned about is that there be ample time for people to properly react who have made very large investments.

Mr. WYDEN. Thank you, Mr. Chairman.

Mr. BARTON. Thank you.

The Chair would recognize himself for some questions.

Just a general question. I mean, you're the industry that's had to put the money up to comply with this part of the Clean Air Act. I take it that everybody in the associations that you represent support the reformulated gasoline program. Is there anybody that wishes us to repeal it?

So this is one section of the Clean Air Act that the affected industry is supportive of? I think that's important to put on the record.

Mr. Ewing, could you give us an estimate of how many hundreds of millions or billions of dollars have been spent by the refineries of this Nation to be able to supply the reformulated gasoline?

Mr. EWING. I can't say exactly how much has been spent thus far. I think the NPC has a report out that the industry will spend up to \$37 billion by the time the reformulated program is at its full—

Mr. BARTON. Up to, but as of this date, Mr. DiBona, does API have any information about how much has been spent to date?

Mr. DiBONA. We don't have any accurate information, but it's several billion dollars as I understand it.

Mr. BARTON. Several billion.

Mr. Dineen, you indicated that because of the reformulated gasoline requirement, that the refinery capacity of gasoline available is actually increased by 5 percent. That would lead me to believe that refineries have added capacity as opposed to refitting existing capacity.

Is that your understanding?

Mr. DINEEN. What I meant by that, Mr. Barton, is by putting more ethanol and MTBE into the gasoline pool, we definitely l

built new capacity for both of those oxygenates, you have in effect expanded the gasoline pool.

Mr. BARTON. Has the total gasoline refining capacity increased?

Mr. DINEEN. The total supply of gasoline including oxygenates has increased with this program. I don't believe there has been an effective increase in refinery capacity.

Mr. BARTON. Now, I want to ask some questions and give each of you an opportunity to comment on this opt-out. It's one of those things that I don't think we really thought through when we required areas to voluntarily opt-in. Some did and now some have begun to opt-out.

You heard my comments to Ms. Nichols and to Mr. Riggs about recovering infrastructure investment in an adequate time frame. I'd like for you to reply to that. And also perhaps Mr. DiBona can comment on Ms. Nichols' assertion that she felt some people were advocating within the industry a quicker opt-out time frame.

So I would like each of you to comment on proposed solutions on how we do opt-out and what should be recovered, if anything, that's been invested by the industry before areas that opt-in opt-out. And that's just an open question to all four of you.

Mr. DiBONA. Well, as I indicated, I really didn't think that Ms. Nichols' reaction was either thoughtful or open-minded. That is, I thought she was working very hard to defend a 30-day opt-out. And the arguments that she used were twofold. One of them was, well, somebody's going to do it. And, in fact, someone has always chosen to deliver RFG, so there really is no problem.

This was in response to your point that people might be reluctant to make the investment in the future after having been burnt once or with the uncertainty associated with it. I thought that was a particularly poor answer because the evidence that people would, in fact, make the investment was made before anybody believed that there would be such an easy opt-out; that EPA would so quickly roll over to every political wind as they have demonstrated they will do. And that piece of evidence will be in people's mind in the future.

Second, it may very well be the case that someone will choose to deliver the fuel. But the question is, will enough people be willing to deliver the fuel or will people be willing to make the kinds of investment that will ensure that the fuel is delivered at a low cost? Or will those things not occur and the chances are—

Mr. BARTON. So we need some solutions—I mean, I think we pretty well established that the current opt-out regulation as it has been proposed is inadequate.

Mr. DiBONA. The point I'm making is, she gave you two answers and those two answers were meant to defend the notion that 30 days of totally adequate and one of them is well, heck, people will do this anyway. And I am making the argument that that is a very short-sighted, not very thoughtful response to your question. And it shows a cast of mind about this thing.

The other argument was that some companies will want a shorter time. She urged that and she used the plural and it would amaze me if there were companies that wanted less than 30 days.

These are competitive issues. It would not surprise me that someone who chose not to prepare to deliver a formulated gasoline

into some area would like to see a very short opt-out, because it would affect his competitiveness in that area. And if that's the kind of person or company that came in and made that claim, it shouldn't be taken very seriously by the EPA.

So we have discussed this within the API and we have come up with a proposal and that proposal consists of the three things that I mentioned: That there be a formal request in writing from the governor; the request should be published in the Federal Register as a rulemaking, inviting public comment; and that EPA should evaluate the impact of the request on the RFG program and make any necessary adjustments. Every opt-out decision should take into account the investments that people made, the very principle you were espousing in addition to the logistics of changing the fuel.

Mr. BARTON. I want to make sure that your industry association is not opposing the opt-out.

Mr. DiBONA. No. We have never opposed the opt-out. We have always said that that's up to the governor. If a state wants to opt in, fine. If they want to opt out, fine, we have no problem with them doing that. But we support an orderly procedure that takes into account the fact that people have acted on the prior decision of that state to tell us that we may not sell gasoline in that area unless it's reformulated gasoline.

Mr. BARTON. If we adopt a mechanism similar to what you have just outlined, is the industry prepared to justify the incremental cost that would need to be recovered? Can you provide such—perhaps proprietary information in a way that doesn't compromise competitiveness in the market? Because I'm more than willing to—

Mr. DiBONA. I don't think there has been any great debate about the incremental cost of producing reformulated gasoline which has been variously estimated at 3 to 5 cents a gallon. EPA has used that number. We've used that number. And, incidentally, it will be more when you get to Phase II.

Mr. BARTON. The reason I am somewhat belaboring this point is that it's almost a certainty now that we are going to do a series of amendments to the Clean Air Act. And this appears to me, based on this hearing, to be one of those areas that we may need some legislative language.

And if that is the case, I want to make sure that we put provisions in that actually make sense and have a high degree of probability that they would actually work if implemented. So we need to give some thought to timing and those things that have to be considered in those areas that voluntarily opt-in and then decide to opt-out.

I think you would make the opt-in decision based on what the requirements are to opt-out knowing that if you opt-in, you may be committed for 2 years or 3 years or for a certain amount of time.

My time has expired. Since this is the last panel and we are the last two surviving congressmen here at the hearing, time is not a real problem.

I would yield to—

Mr. DiBONA. The longer you make that time, the more people are going to be willing to make the investment and, therefore, the in-

cremental cost is going to be lower; the longer you make the time to opt out as a condition of opting in.

Mr. BARTON. I think Mr. Dineen has a comment.

Mr. DINEEN. From the point of view of an oxygenate producer to build a new world scale MTBE unit costs approximately \$300 million and would take you about 3 years, I would hope.

Mr. BARTON. To build it?

Mr. DINEEN. The build it. And you are spending that money during that time frame and haven't recovered anything until that plant starts up, I would hope that an opt-out would have a similar time duration. I think we're talking on the order of years versus the order of months as I understand the proposed policy.

I would hope as we go forward, there isn't going to be a rush to opt-out, because this has proven to be a very effective fuel, very effective program. And I think in the future, we are going to see that it will be effective in maintaining attainment status for a lot of areas.

So hopefully this is not going to be a problem. I think it was more of a problem in the early start-up phase, where we didn't get a chance in some states to get over some of the early hurdles that we have gotten over in most of the other areas in the rest of the country.

Mr. BARTON. Mr. Wyden.

Mr. WYDEN. This last round, I think, has been a little troubling to me.

Mr. BARTON. Do you want a full—

Mr. WYDEN. No, just one question, Mr. Chairman.

It's almost as if you all are talking about some kind of EPA baby-sitting program for the states with respect to opt out. And I think I want to pick up on your testimony, because maybe this can clarify for me, Mr. Ewing, exactly what you all were talking about.

Now, you said in your testimony that you're not opposed to states being able to opt out of the program, but you claim that the recent EPA proposal on opt-out doesn't give you all the kind of certainty that you need.

Why don't, for this last question, you try to spell out what it is you think states ought to have to march through before they can get out of using reformulated gas. And you have told us you wanted standards. You have told us various things, but as precisely as you can, what is it that you would like states to march through before they can get out of using reformulated gas?

Mr. EWING. We have submitted as API, and the NPRA went along with it, submitted a proposal to EPA on what our ideas were to facilitate opt-out.

Mr. WYDEN. Just tell me.

Mr. EWING. I'm trying to remember all the details.

Mr. WYDEN. Even a couple. One.

Mr. EWING. We tried to set the deadlines at a position where a state couldn't opt-out in the middle of the year which would affect the toxics averaging. We tried to set it maybe at a January 1 date. We suggested that, or at the end of a certain VOC period or non-VOC period.

We tried to suggest that if it's part of the SIP, that the state had to provide equivalent benefits, in other ways, and not just walk

away and say we are not going to do the RFG program and, therefore, we are not going to meet our 15 percent SIP requirement.

I think one of the statements made earlier indicated that some companies preferred shorter time for opt-out. I think these first opt-outs were before the RFG program started and some companies may just want to get it behind them and go to ordinary gasoline before they started supplying RFG. This was not implied after the program started.

Mr. WYDEN. Well, I will review what you all have said, but, I mean—I am picking up the religion here—state's rights is on a roll.

Mr. BARTON. Better late than never.

Mr. WYDEN. We really need to figure out what it is that we are going to force the states to march through before they can get out of using reformulated gas and I think we have to get beyond the talk of setting some standards and really learn what the specifics are of getting it done.

Do you want to add something?

Mr. SMITHERS. Just one comment. There are two aspects of the timing on a decision, and I think we've kind of slipped over one of them. One is that the quicker the EPA can make a decision, the better.

Then the second element is the time allowed for opt-out if the decision is to allow the opt-out. That is where you need to look at how the industry and the consumer can react to it. The problem we are facing now is that in December, the decision was made to let the counties out and we still have not heard whether they are out permanently. I assume they are.

We had the same situation with the New Jersey oxygenate in January. A decision was made to let them out of the program and they said we will study and let you know whether they are in next year. Next year starts in October. That's where the uncertainty lies and that's where the big problem is. Once the decision is made, then there needs to be an orderly time to let this out.

The statement was made that Pennsylvania New York opted-out prior to the program. That's not really true. There was a requirement that all of the gasoline in storage in those states had to be reformulated 1 month prior to the start-up retail. The gasoline was already in storage in all of the states when these opt-outs came about. And we were required at least 3 months by the time you make the gasoline and get it into storage before the program started. To do anything less than that to get out of the program seems inequitable.

Mr. BARTON. That is just for the consumables that have already been refined.

Mr. SMITHERS. That has nothing to do with the fact that you planned the refinery runs and make the runs at least 1 or 2 months before that.

Mr. DiBONA. And changed all the tankage and all the other things. When we have thought about this, we thought—

Mr. BARTON. Use the microphone, please.

Mr. DiBONA. When we thought about this, we thought about it in the context of the regulation, not in the context of opening the Clean Air Act, because that's what's been relevant to us. So these

sets of proposals that we are laying before the subcommittee, we will come back to EPA with in our comments.

Mr. BARTON. Well, keep that up. I'm not—

Mr. DiBONA. We are aimed at just having some formal procedure so that there was some degree of certainty. But the kind of thing you raise could have some benefits. That is, if you made it clear to a governor that if he chose to opt-in, there were conditions about the way in which he exited and that might include a specific period of time after a decision is made to allow the opt-out. It would not, you know, weaken his—the local authority and we are not trying to do that.

It would just say to him, this is the condition upon which you can come in. You should understand that if you want to come out, these are the conditions under which you have to exit. There is a lot of reasonableness to that.

Mr. BARTON. When you go down and sign up for a savings account, your intention is to save money. But they make you sign a statement that if you do early withdrawal, there are certain requirements that have to be met and you know that going in. Now, you may ignore them, but you know it going in.

Mr. DiBONA. This situation has actually been worse than you understand because it isn't just that we have had this problem with people withdrawing, but there are a whole bunch of other rules associated with reformulated gasoline. One of them was just mentioned here and that is that there are a series of tests that are being applied. And this fuel is being sampled.

And if we don't, on average, meet certain standards in that fuel, then the strictures under which we operate are tightened up. All of the standards are raised for the next period.

And so when you have someone opting-out, if he opts-out at the wrong time, and particularly as was suggested by EPA in the early part of this year, that they would simply not enforce the law, they would not enforce the regulation, well, that was the worst of all possible worlds for us because then you had some people who were trying to obey the rules and regulations and others that weren't. But the ones that weren't, you would have been measuring their fuels too. And they would not have met the standards. It would have forced up the requirement in future years. This whole thing is tremendously interconnected.

Mr. BARTON. Well, that's why we need to give it some thought. I have one final question, and I think Congressman Wyden has a final question or comment. I will yield to him.

Mr. WYDEN. I thank the Chairman for yielding. I just want to say, Mr. DiBona, that I hope you will continue to give us suggestions for administrative approaches to clarify this role of the states so that my Republican colleagues don't have to write a piece of Federal legislation that would impose more mandates on the states.

Mr. BARTON. I appreciate my colleague's kind concern.

Mr. WYDEN. Always.

Mr. BARTON. The final question that I have deals with the potential health hazards of MTBE.

Congressman Sensenbrenner of Wisconsin indicated at the staff level that he had a series of questions on that. Obviously, he is very concerned and I want to enter his comments into the record.

Each of you alluded to at least the alleged or potential health problem associated with using MTBE and the reformulated gasoline. Would any of you wish to elaborate on that issue before we conclude this panel?

Mr. DINEEN. I would reiterate some of what I have said already. We think the product has been fully tested.

Over the last 15 years, there have been over 50 studies that confirm the safety of the product. But we are not standing still.

We are trying to reinforce the database on the product. I think the recent study in Wisconsin confirmed that MTBE is not responsible for some of the things we have observed up there, and we are very confident that this is one of the most tested chemicals in use and we recognize we have an obligation to continue to do some tests.

We have spent as an industry over \$10 million since 1987 and we are planning to spend another \$3 million over the next couple of years to further support the database, but everything we have seen confirms this is a safe product to use and a safe product for the public.

Mr. BARTON. I think EPA in their written testimony indicated that their studies indicate the same thing, that there have been no proven health hazards. I am satisfied with that result.

Mr. DiBONA. The Wisconsin Health Department study which was just released was peer reviewed by scientists from 11 State health departments, four universities, the Centers for Disease Control and the U.S. EPA and they all concurred in the findings. This stuff does smell differently, no question about that.

And there are some people that may be highly sensitive to the smell. You may have people with acute sensitivity much like people have acute sensitivity to some of the dyes we use on the fuels, et cetera. If that is the case, you just use a different brand.

But to the extent that happens, and it is a fairly rare thing, and we have never been able in these studies to find anyone who has that problem in the tests that EPA has done. But as far as any kind of chronic or acute illnesses, we have not found them.

Mr. BARTON. We want to thank you gentlemen for your attendance and your testimony. I think we can say at the conclusion of the hearing that the Reformulated Gasoline Program Title of the Clean Air Act is one of the at least qualified successes.

There are still improvements that need to be made, but it is good that we can do a hearing that says some positive things about the Act.

Thank you, gentlemen. With that, the hearing is concluded. Thank you.

[Whereupon, at 12 noon, the subcommittee was adjourned.]

[The following materials were submitted for the record.]

PREPARED STATEMENT OF THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

I. INTRODUCTION

The Society of Independent Gasoline Marketers of America ("SIGMA") submits this statement to the House Commerce Committee's Oversight and Investigation Subcommittee on the occasion of its oversight hearing on the implementation of the reformulated gasoline ("RFG") program. SIGMA respectfully asks that this statement be included in the official record of the hearing.

SIGMA appreciates the opportunity to submit this statement and commends Congressman Barton, the chairman of the Subcommittee, for calling this hearing. The implementation of the RFG program, and the associated anti-dumping program, by the U.S. Environmental Protection Agency ("EPA") over the past year deserves the close scrutiny of the Subcommittee. While some might call the RFG program to date a success, it has not been a success for SIGMA members, for all independent gasoline marketers, or for consumers.

Throughout the Regulatory-Negotiation conducted by EPA on the final RFG rule (to which SIGMA is a signatory), SIGMA sought to assure that supplies of gasoline for independent marketers and consumers would be plentiful under the new program. After the completion of the Reg-Neg, SIGMA continued to press EPA for changes in the draft final RFG rule that would assure the fungibility of different batches of gasoline throughout the distribution system, ample supplies of both RFG and conventional gasoline, and continued affordable gasoline prices for consumers.

Unfortunately, the final RFG rule, as promulgated by EPA, failed to alleviate SIGMA's concerns on these issues. In 1995, supplies of gasoline are down, prices are up for consumers, and the nation's gasoline transportation and storage system has been stretched beyond capacity by the multitude of new gasolines which must be segregated under the final RFG rule. In addition, actions by EPA to remove certain areas from the RFG program and by several states to change the types of gasoline that must be sold in certain seasons have added to the disarray in the RFG program, exacerbating supply problems and pricing distortions.

Mr. Chairman, the members of SIGMA are not fans of the current RFG program. It has caused significant financial pain for most independent gasoline marketers and this situation shows no sign of abating in the near future.

In light of the current situation, SIGMA respectfully asks the Subcommittee to re-examine the current RFG regulations and to give strong consideration to stopping the implementation of Phase II of the RFG program under Section 211(k) of the Clean Air Act. The problems of the current RFG program will only grow worse if refiners are required to further reformulate their gasoline to achieve additional reductions in emissions. Simply stated, if your constituents have disliked the higher prices of the initial phase of the RFG program, they are going to like Phase II even less.

II. SIGMA AND THE CHARACTERISTICS OF ITS MEMBERS

A. *The Association*

SIGMA is a national trade association representing approximately 25 independent gasoline marketers and chain retailers who own or supply over 24,000 retail motor fuels outlets nationwide. SIGMA members operate in all 50 states. Its members sold over 25.5 billion gallons of motor fuel last year, accounting for between 15 and 20 percent of the motor fuels annually sold at retail in the United States. SIGMA members employ over 173,000 workers nationwide, and have combined total sales of over \$30 billion annually.

B. *The Place of the Independent Marketer in the Gasoline Distribution System*

SIGMA members in particular, and independent marketers in general, have traditionally been recognized as the most price competitive segment of the gasoline marketing industry. This position has been achieved because independent marketers have superior operating efficiencies when compared to the majority of their competitors. As a result of these operating efficiencies (e.g., lower overhead costs), independent marketers can price their gasoline at a level lower than their competitors—simply because the independent has less built-in costs to recover on the price of each gallon sold. The historic role of the independent marketer have been emphasized by the U.S. Court of Appeals for the Sixth Circuit in *Marathon Oil Company v. Mobil*

*Corporation*¹ when it noted that independent marketers and dealers "...are the most competitive factor in the industry at the wholesale and retail levels.²

The role independent marketers play in the gasoline distribution system is completely dependent upon the existence of numerous sources of supply for their retail outlets. Independent marketers do not refine gasoline. They must purchase it from foreign and domestic refiners in the wholesale distribution market. As long as there is competition among suppliers at the wholesale level of distribution, independent marketers can obtain gasoline at competitive prices and their operating efficiencies will remain relevant.

Naturally, refiners with retail operations in direct competition with independent marketers are reluctant to sell gasoline to the independent. However, because of the multiple sources of supply open to independent marketers, refiners—even those in direct competition with the independents—do sell gasoline readily to independents because each refiner knows that if it does not sell product to an independent, there are numerous other refiners that will supply that independent with product.

In sum, the independent marketers' niche in the gasoline marketing industry is based upon the existence of numerous sources of supply. If any of these alternative sources of supply are eliminated by any means—changes in the marketplace, governmental regulation, or the withdrawal of refiners from a given market—then the operating efficiencies through which independent marketers compete in the market will disappear. When these operating efficiencies disappear, so will the independent marketers, to the detriment of competition, lower gasoline prices, the average consumer, and the economy in general.

III. THE IMPACT OF THE REFORMULATED GASOLINE PROGRAM ON THE MARKETPLACE AND ON SIGMA MEMBERS

A. The Destruction of Fungibility

Before the advent of the reformulated gasoline ("RFG") program, the United States—and most of the rest of the industrialized world—used gasoline with similar specifications. Thus, the gasoline burned in a motor vehicle in Chicago or Seattle was virtually identical to a gallon used in New York. There existed in the United States essentially three different types of gasoline: regular unleaded, mid-grade unleaded, and premium unleaded. In SIGMA's view, the nation's gasoline distribution system was the most efficient commodity distribution system in the world.

On December 1, 1994, however, all this has changed. The advent of the RFG program has added enormous complexity to the nation's gasoline distribution system. Where as historically there have been three grades of gasoline, under the RFG program there are at least 18, all of which must be transported and stored separately. At the New York Harbor, a SIGMA member can now buy cargoes of: regular, mid-grade and premium conventional gasoline; regular, mid-grade and premium finished RFG; separate regular, mid-grade, and premium reformulated blendstock for oxygenate blending ("RBOB") to blend MTBE or ethanol to produce finished "southern" summer RFG; and, separate regular, mid-grade, and premium RBOB to blend MTBE or ethanol to produce finished "northern" summer RFG.

As stated above, the Environmental Protection Agency has dictated that all of these different types of gasoline must be segregated throughout the wholesale distribution system. This explosion in the types of gasoline has imposed a severe strain on the nation's pipeline and bulk storage tank systems. In some areas of the country, particularly in the Northeast bulk gasoline storage tanks are sitting empty—even as the season of highest consumer demand for gasoline is starting—because the gasoline distribution system cannot supply the necessary product. In other areas, there simply is not enough bulk gasoline storage capacity to hold the numerous varieties of gasoline mandated by the RFG and anti-dumping programs.

In essence, the RFG program has destroyed the fungible gasoline distribution system that has in the past been the most efficient in the world. Independent marketers, and consumers, are feeling the burden of the RFG system through reduced supplies and increased prices.

B. Supplies of All Gasoline, Both RFG and Conventional, Are Down

As a commodity, the price of gasoline, both RFG and conventional, generally is dictated by supply and demand. The U.S. Department of Energy's Energy Information Administration ("EIA") has reported that gasoline demand in the United States was up approximately four percent over the first five months of 1995 when com-

¹ *Marathon Oil Company v. Mobile Corporation*, 669 F.2d 378 (6th Cir. 1981), cert. denied, 102 S.Ct. 1490 (1982).

² *Id.*, at 383.

pared with a similar period in 1994. Consequently, unless supplies of gasoline increase to meet this demand, the price for gasoline will rise as supplies become more scarce.

Supplies of gasoline have not increased to meet this new demand. The nation's domestic refining capacity is operating at peak utilization rates. The high conversion portion of fuel manufacturing capacity is operating at close to 100 percent utilization. As a result, there is little chance that domestic refiners will be able to increase production to meet the increased demand.

In addition, gasoline imports are down. Foreign supplies of gasoline have decreased substantially in 1995. For example, during the period January-March 1995, imports of finished motor gasoline were down 2.5 million gallons per day, or 20 percent, from the same time last year, according to EIA. In 1994, a daily average of 15 million gallons of gasoline was imported into the United States. Between the beginning of January and the end of February of this year, this daily average dropped to 8.3 million gallons, a 45 percent decline.

There is a simple reason for this decrease. Many foreign refiners that formerly exported product to the United States are simply unable to manufacture conforming product for the U.S. market due to the discriminatory standard being applied to foreign refiners under the RFG rule. SIGMA warned EPA and Congress in 1994 that reduced supply and increased prices would be the result of the RFG rule's discrimination against foreign refiners—a warning that was ignored. EIA's statistics confirm SIGMA's predictions.

C. Consumers Are Paying More For All Gasoline, Not Just RFG, All The Pump

Before the RFG program began, EPA predicted that the increased costs of refining RFG would cause the price of gasoline in RFG areas to rise by approximately four cents a gallon. In an efficient market unhampered by other factors, EPA's prediction might have come to pass. However, as outlined above, the nation's gasoline distribution system is no longer an efficient network of fungible commodities. Instead, it is a segregated, inefficient, and patchwork distribution system that includes non-tariff trade barriers to the smooth movement of product across international borders.

Consumers are paying through the nose for this inefficient distribution system. According to Platts Pricing Report, during the first week of June in 1994 the price (before federal and state excise taxes) for regular unleaded gasoline at the New York Harbor—the primary distribution point for the Northeast—was 51.6 cents a gallon; the price for a gallon of 93 octane super unleaded was 60.4 cents.

In the first week of June 1995, Platts reported that the price for a gallon of regular unleaded conventional gasoline at New York Harbor was 61.6 cents, while super unleaded conventional was 68.8 cents. These prices represent a 10.0 and 8.4 cent increase over the course of a year—a 19 percent increase for regular unleaded conventional gasoline and a 14 percent increase for super unleaded conventional gasoline.

The price increase for RFG is equally high. For the first week of June, Platts reported that the price of finished regular unleaded RFG at New York Harbor was 63.6 cents, while finished super unleaded RFG was priced at 70.0 cents per gallon. These RFG prices show a 12.0 cent increase for regular unleaded RFG and a 9.6 cent increase for super unleaded RFG—a 23 percent increase for regular unleaded RFG and a 16 percent increase for super unleaded RFG.

Clearly, the real world experience of the marketplace has eclipsed the theories of EPA. Rather a four cent per gallon increase, the nation's consumers are paying between eight and twelve cents more per gallon under the RFG and anti-dumping programs.

IV. ADDITIONAL FACTORS CAUSING DISRUPTION IN THE GASOLINE DISTRIBUTION SYSTEM

A combination of ill-considered or misguided actions by Congress, EPA and various states have exacerbated the problems caused by the implementation of the RFG program for the gasoline distribution system.

A. Congress Prevents EPA From Ending The Discrimination Against Gasoline Imports

Although the final RFG rule issued by EPA in February 1994 held gasoline produced by foreign refiners to a different, more stringent standard than gasoline produced by domestic refiners, EPA sought in May 1994 to correct this situation partially by issuing a proposed rule to level the playing field between domestic and foreign refiners. In September, however, Congress adopted an amendment to the FY 1995 VA/HUD appropriations bill that prohibited EPA from finalizing the proposed rule. As a result, the discrimination against imported gasoline remained in the final RFG rule, resulting in the decrease in imports outlined above.

B. "Opt-Outs" Cause Turmoil In Markets

The final RFG rule was published in February 1994, giving the domestic petroleum industry less than ten months to prepare for the advent of the RFG and anti-dumping programs. Despite this almost impossible time frame, the petroleum industry responded with an almost Herculean effort during 1994 and began to ship batches of RFG from its refineries in October—well before the start of the RFG program on December 1, 1994. As of the fall of 1994, it appeared that the RFG program would begin on schedule and with gasoline supplies that appeared to be adequate.

This situation changed dramatically in late November and December when the governors of Pennsylvania, New York, and Maine petitioned EPA to remove certain counties in their states from the RFG program. These state officials were responding to consumer concerns that gasoline prices would rise precipitously in RFG areas.

EPA granted these requests on an expedited basis, despite the fact that the gasoline refining and marketing industries had worked for over a year to supply RFG to these areas of the country. As a result, marketers in these states were left with supplies of more expensive RFG in their bulk and retail storage tanks that they could only sell at conventional gasoline prices. One need only look at the public reports of the earnings of the major petroleum refiners serving the Northeast to determine the impact of this EPA reversal on the operations of these refiners—virtually to a company, substantial losses were reported for the three month period in question.

Interestingly, the withdrawal of these counties from the RFG program may have postponed the RFG supply crisis that is only now taking shape. By permitting these counties to exit the program, EPA reduced the demand for RFG considerably during the early months of the RFG program, thereby masking any supply shortfalls that may have resulted from the destruction of the distribution system's fungibility and the discrimination against foreign refiners. Only now, as gasoline demand increases for the summer driving season, might the true impact of the RFG program be felt by consumers through spot shortages and higher pump prices.

From SIGMA's point of view, EPA's actions in granting these "opt-outs" on an expedited basis was misguided. Rather than recognizing that the petroleum markets needed time to adjust to the new distribution patterns and to clear the system of RFG in the affected areas, EPA bowed to political pressure and granted the governors' petitions almost immediately. In the name of political expediency, EPA cost gasoline refiners and marketers tens of millions of dollars in losses and undermined any faith the industry may have had in EPA's commitment to a smooth implementation of the RFG program.

C. Wisconsin's Request For Suspension of the RFG Program in Milwaukee Area

EPA's response to the request from the governor of Wisconsin to suspend the RFG program in the Milwaukee area due to public concerns about the health and engine performance programs associated with RFG was equally unsatisfactory. Due to the fact that Milwaukee is, under the Clean Air Act, a mandatory RFG area, EPA had no choice but to turn down the governor's request. However, at the same time, EPA indicated in a letter to the governor that the Agency would call on the petroleum industry "to provide an alternate choice of gasoline at limited locations in Milwaukee" while EPA considered Wisconsin's suspension request.³

The clear import of this section of the EPA letter was to shift the burden for defending the sale of RFG in Milwaukee from the EPA and Congress, which had mandated its sale in the area, to marketers in the area. By responding to Governor Thompson in this manner, EPA left marketers exposed to public criticism for failing to market an appropriate "alternate fuel," when in fact these marketers were required, under potential penalties of up to \$25,000 per day, to market only RFG in the Milwaukee area. This abdication of responsibility on EPA's part was and is indefensible.

D. State Actions on Fuels Further Disrupt Supply and Markets

In addition to these congressional and EPA actions, the actions of several states have added to the turmoil in the gasoline markets over the past year. For example, Georgia and Missouri have mandated that sub-Reid Vapor Pressure ("RVP") gasolines be sold in Atlanta and St. Louis, respectively, to address ozone problems in these cities. These states have adopted these sub-RVP requirements to avoid adopting the RFG program. These are the only areas of the country that have adopted these sub-RVP mandates, necessitating the production of special brands of gasoline to be marketed in these areas only.

³ Letter from EPA Administrator Carol M. Browner to Wisconsin Governor Tommy G. Thompson, February 24, 1995.

New Jersey also caused a significant disruption in the petroleum markets in the Northeast this Spring when it announced in late February that it was shortening its oxygenated fuels season by two months and would end the oxygenated fuels season on March 1. Again, EPA granted this request immediately, despite the fact that gasoline marketers in New Jersey had locked in supply contracts for oxygenated gasoline through the end of April. The result: these gasoline marketers were left with more expensive oxygenate gasoline that they were forced to either divert to other markets with a longer oxygenated gasoline season or sell at non-oxygenated fuel prices.

As a result of New Jersey's actions, the oxygenated fuels seasons in Connecticut, New York, and New Jersey now all operate on different schedules, despite the fact that all of these markets generally are supplied from one location—the New York Harbor. For gasoline marketers, this situation is untenable, as they must segregate different batches of gasoline for specific markets, reducing the fungibility of supply and increasing the costs to consumers.

V. SIGMA'S RECOMMENDATIONS TO THE SUBCOMMITTEE

During its consideration of the implementation of the RFG program in particular, and the Clean Air Act in general, SIGMA respectfully asks the Subcommittee to consider the following issues.

A. Repeal the Clean Air Act's Phase II RFG Mandate

Starting in the year 2000, refiners will be required, under Section 211(k) of the Clean Air Act, to further reduce emissions from their RFG under Phase II of the RFG program. The domestic refining industry spent over \$10 billion preparing for Phase I of the RFG program and will be forced to spend at least that amount to achieve the emissions reductions mandated by Phase II.

American consumers have reacted negatively to the implementation of Phase I of the RFG program, and undoubtedly will react even more unfavorably when the price increases associated with Phase II of the program are felt. SIGMA urges Congress to consider repealing the Phase II RFG program at the earliest possible date, both to avoid the increased fuel costs this program will visit on the average consumer and to prevent refiners from undertaking the expensive upgrades that will be necessary to produce this Phase II RFG.

B. Return Fuel Regulation to the Federal Level and Direct EPA to Adopt a Reasonable Policy on Fuels Program Changes

The dual regulation of motor fuels at the state and federal levels of government results in unnecessary complexity and confusion in the fuels markets. SIGMA urges Congress to reclaim the regulation of gasoline as a federal issue due to its impact on interstate commerce.

SIGMA also urges Congress to direct EPA to adopt a reasonable policy to respond to state requests to modify the scope or duration of a federal fuels program. There should be a minimum of three months, and preferably six months, between the date that EPA grants a state's request for a modification of its status under a fuels program and the date that the modification becomes effective. EPA's current *ad-hoc* policy of reviewing and granting these state petitions imposes severe hardship on all parties in the gasoline distribution system, including independent marketers.

C. Congress Should Not Renew The Funding Ban On The Foreign Refiner Baseline Rule

SIGMA also urges Congress not to renew the existing provision which prohibits EPA from finalizing the Agency's proposed rule to ease the discriminatory compliance burden on foreign refiners under the RFG program. Congress has witnessed the effect of this provision on the level of imports of gasoline under the RFG program and on the price consumers must pay for this gasoline. The prohibition should be permitted to lapse so that EPA may finalize the rule and permit imported gasoline to move freely across international borders in response to demand and price considerations, not discriminatory governmental regulation.

VI. CONCLUSION

SIGMA is not satisfied with the implementation of the RFG program. Actions by Congress, EPA, and the states have needlessly complicated an already difficult program implementation process. SIGMA urges the Subcommittee, during its examination of the implementation of the RFG program, to consider its suggestions for improving both the scope and the substance of the program. In addition, Congress

should consider consolidating the regulation of fuels at the federal level of government.

SIGMA appreciates the opportunity to present its views of these issues.

**PREPARED STATEMENT OF HON. F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WISCONSIN**

I would like to take this opportunity to thank Subcommittee Chairman Joe Barton and the other members of the House Subcommittee on Oversight and Investigations for the opportunity to submit the following testimony regarding problems associated with the use of reformulated gasoline (RFG) in southeastern Wisconsin. My testimony follows the brief response of an Environmental Protection Agency (EPA) official to my questions to EPA Administrator Browner after her February 9, 1995, testimony before the Commerce Committee (see attachment 1). Unfortunately, due to a scheduling conflict, I am unable to attend today's hearing.

The Clean Air Act Amendments of 1990 (CAAA) mandate the sale of reformulated fuel in nine severe non-attainment areas in the United States, including southeastern Wisconsin. The CAAA required the sale of reformulated fuel to begin in the severe non-attainment areas after January 1, 1995. Since January 1, public outcry against the forced use of reformulated fuel has been tremendous.

After receiving many constituent complaints, I requested EPA Administrator Browner establish a toll-free hotline for consumers to report concerns regarding the use of reformulated fuel. The hotline received over 2,000 calls in an eight day period and approximately 6,000 phone calls to date. In addition, 400 angry residents attended a public hearing held by the U.S. EPA on February 21, 1995, in Milwaukee, Wisconsin. The overflow crowd was promised a second hearing the following day to accommodate over 300 attendees who were turned away due to inadequate seating [see attachment 2]. Unfortunately, EPA officials failed to keep their word and abruptly canceled the second public hearing. Reformulated fuel continues to be the subject of frequent media attention.

Complaints regarding reformulated fuel focus on health problems, poor fuel economy, and engine performance problems. In addition, I believe public safety is at risk as motorists attempt to avoid the purchase of reformulated fuel by purchasing fuel in areas not covered by the reformulated fuel requirement and then transporting it across county lines.

EPA acknowledges a lack of scientific evidence about the safety of oxygenates when mixed with other compounds found in gasoline. EPA states in a December 1994 report, *Health Risk Perspectives on Fuel Oxygenates*, "There is a significant amount of health information about Methyltertiary-butyl ether (MTBE), but very little information on its effects in combustion or evaporative mixtures with gasoline." The report concludes by reassuring the reader that although the risks associated with reformulated fuel are unknown, "the world is replete with ever-present risks ranging from the rather obvious, such as car accidents...."

I am pleased the Health Effects Institute, an independent health research organization has agreed to complete a review of all existing data on health effects related to oxygenates prior to the beginning of the 1995 winter oxygenated fuels program. I look forward to reviewing their findings.

The EPA completed a study directed by the Wisconsin Department of Health and Social Services (DHSS) which surveyed a random sample of 1500 persons in the Milwaukee non-attainment area, Wisconsin areas outside the non-attainment area, and Chicago, and asked a series of health related questions regarding their experience with RFG. Twenty-three percent of respondents in Milwaukee reported experiencing unusual symptoms since November, 1994. However, the report concluded, "...factors, other than RFG use, significantly contributed to the differences in symptom prevalence between Milwaukee and the other two areas studied." An EPA official dismissed the high incidence of health complaints in Milwaukee by stating they were most likely explained by a "media effect". I await the results of a second study directed by the Wisconsin DHSS which will follow-up the individual complaints recorded by the RFG hotline.

Mr. Chairman, I don't take comfort in knowing other dangers exist and I don't dismiss my constituents fears and concerns so easily. My constituents aren't satisfied either. It seems incomprehensible that the federal government would continue to mandate repeated exposure to a chemical mixture which has generated so many health complaints while we seek to answer these questions. It is disgraceful that these provisions—intended to protect public health—are being enforced despite thousands of citizen complaints that reformulated fuel is actually harming their health.

The Wisconsin Department of Natural Resources and the U.S. EPA conducted an on-road study of the fuel economy of reformulated gasoline. The March, 1995, study was conducted in response to consumer concerns that RFG sold in the Milwaukee area was responsible for large reductions in motor vehicle fuel economy—larger than the 2-3% reduction predicted by previous studies. The study's Executive Summary states, "The average of 24 fuel economy comparisons of RFG to ordinary gasoline was a 2.8 percent reduction in miles/gallon when using RFG." It continues, "A large amount of variability is inherent in fuel economy measurements. Sources of this variability include differences in personal driving habits, weather (temperature, wind effects and precipitation), traffic patterns (e.g., rush hour verses midday or weekends and highway driving verses city driving), the temperature effect on fuel volumes when pumping the fuel, and changes in tire pressure."

The Executive Summary continues, "...wintertime driving results in large decreases in fuel economy when compared to other times of the year. This is due to less dense (and lower energy content) wintertime fuels (that evaporate easily to facilitate cold starts), more stop and go driving in the winter, more friction between vehicle mechanical parts, idling to heat up the vehicle prior to a trip, poor road conditions, a greater power load on the engine due to heating up the vehicle prior to a trip, poor road conditions, a greater power load on the engine due to heating and defrosting, and richer fuel/air mixtures." Consistent with reports from Wisconsin residents, the Executive Summary concluded, "...each one of these variables can have a profound effect on mileage and the differences combined can account for as much as a 35 to 40 percent difference in expected fuel economy."

Since January 1, my town hall meetings and office hours have turned into forums for individuals to exhibit their blown-out pistons from their small, two-stroke engines. I frequently encounter mechanics and consumers who have been given contradictory or insufficient information to make educated decisions regarding the safety of using RFG in their boat motors, lawn mowers, and snow-blowers. In addition, motorists often express frustration that they are unsure if RFG is safe for their automobiles and have experienced difficulty identifying the type of RFG sold at a particular retail location.

I maintain additional information should have been provided to consumers in advance of implementing the RFG provisions of the CAAA and more needs to be done today. More needs to be done to inform consumers about engine performance issues and all steps that can be taken to prevent engine problems. Unless consumers can be assured RFG will not harm their engines or necessitate expensive engine modifications, I urge the Committee to allow limited amounts of conventional fuel to be sold in non-attainment areas for use in small, two-stroke engines.

Since not all of southeastern Wisconsin is mandated to use reformulated fuel, RFG requirements have created a dangerous practice of "border-hopping" to obtain conventional fuel outside the non-attainment area and economic hardships or windfalls depending on which side of the non-attainment border an individual does business. I have heard many first-hand accounts about individuals obtaining twenty-or-so gallons of conventional fuel outside of the non-attainment area and driving it back to the non-attainment area. In my opinion, the border-hopping situation is a tragedy waiting to happen if one of these vehicles is involved in an accident. To date, I am unaware of any serious incidents, however, the safety of Wisconsin residents should be a primary concern for all public officials.

The issue of border-hopping also has serious economic implications for individuals, as well as small business owners. Gas stations outside of the severe non-attainment area which are not required to sell reformulated fuel are thriving, while gas stations that are required to sell only reformulated fuel are going out of business. (I have been informed some individuals' business is down over 35%).

The CAAA requirements have arbitrarily devastated small family businesses or created financial windfalls depending on which side of the county line a small business is located. Surely, Congress did not foresee the public's rejection of RFG and the economic winners and losers which would be randomly created by government regulations instead of honest, hard-work.

One issue which raises concern is the premise underlying the CAAA that areas in which high ozone concentrations are found can lower ozone levels by limiting emissions strictly within the non-attainment area. I have serious doubts that air standards in southeastern Wisconsin will ever be attainable by any definition of "reasonable measures" because of the issue of ozone transport. Ozone transport was poorly understood when CAAA passed. A basic underpinning of this Act is the belief that ozone restrictions should be placed in regions where high levels of ozone are found, based on the assumption that emission reductions in the immediate area will reduce ozone levels in the non-attainment area. Recent models by the Wisconsin Department of Natural Resources refute this claim and demonstrate it will be difficult

for Wisconsin to attain their air quality goals without the cooperation of those areas that are actually the source of the pollution. Studies have shown air particulates in Wisconsin originated hundreds of miles away.

I am very concerned about the air quality in southeastern Wisconsin. However I also believe Congress has a responsibility to ensure CAAA is based on good science. I support additional research related to the long-range transport to tropospheric ozone and its precursors by EPA. I believe EPA should conduct appropriate research in consultation with the National Research Council's Board on Environmental Studies and Technology and the affected states to produce a report addressing the effects of long-range transport of ozone and its precursors. The report should also investigate alternative national-scale ozone control strategies to help urban areas attain the National Ambient Air Quality Standard for ozone.

I requested EPA suspend regulations pending completion of comprehensive engine performance or health studies on reformulated fuel exposure. I was and continue to be outraged that EPA Administrator Browner rejected my and Wisconsin Governor Tommy Thompson's request that EPA regulations implementing the CAAA be suspended until health and performance problems relating to reformulated gas are answered (see attachment 3). I regret the Administrator failed to protect the health and property of Wisconsin citizens.

The Clean Air Act recognizes the need to reduce the sources of air pollution. However, we must be certain that the regulations implementing the Act are appropriate, and do not endanger public health and safety. Although *controlled studies* on the health affects of oxygenated fuels exist, and some have been completed, it is important we not ignore the real life experiences of Wisconsin citizens.

I think EPA officials should have respected the request by the Governor of Wisconsin to suspend the reformulated fuel requirement. As you are aware, several pieces of legislation have been introduced in the House which would suspend or repeal the reformulated gas requirements, among other things. I will continue to support measures to repeal or suspend the EPA mandate requiring the sale of reformulated fuel in southeastern Wisconsin.

I urge the Committee to amend the Clean Air Act Amendments of 1990 to address my concerns and those of thousands of Wisconsin residents. I appreciate the opportunity to submit testimony to the Committee today and look forward to working with you to find a solution to this problem.

ATTACHMENT 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

Honorable F. James Sensenbrenner, Jr.
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Sensenbrenner:

Thank you for your letters of January 26, 1995, February 2, 1995, and February 7, 1995, regarding the reformulated gasoline (RFG) program. In your letter of January 26, you expressed concern that RFG is causing damage to small and two-stroke engines, and requested that the Environmental Protection Agency (EPA) exempt these engines from the RFG regulations. In your letters of February 2 and February 7, you requested that EPA establish a hotline for individuals to report health and engine performance problems associated with the use of RFG, and that EPA provide you with a report detailing how EPA will respond to concerns expressed by individuals who have utilized the hot-line.

As you know, on February 10, 1995, Governor Thompson requested that EPA temporarily suspend the mandated sale of RFG in Southeast Wisconsin until April 1, 1995, and conduct studies on the health effects of RFG in Wisconsin. On February 24, 1995, in response to the Governor's letter, Administrator Browner outlined several measures that EPA is undertaking to address the concerns raised by the citizens of Wisconsin regarding the use of RFG including steps taken to address individuals with motor vehicle performance or small engine concerns. A copy of that letter is enclosed.

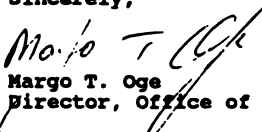
As you are aware, in response to your request for a hotline number, we have established a hotline for calls from states located within EPA's Region V boundaries, which includes Wisconsin, Illinois, Indiana, Ohio and Michigan. That number is 1-800-21-8431. Also, the American Petroleum Institute (API) has a national hotline for calls concerning RFG. The API hotline number is 1-800-468-6734.

EPA is in the process of implementing the measures outlined in Administrator Browner's letter to Governor Thompson, including working with state health officials, the American Automobile Manufacturers Association (AAMA), and API to respond to specific calls received on the hotline. We have referred the health related complaints directly to the state health department for immediate response, and have provided the health department with a copy of all of the complaints we have logged in.

We will continue to keep you informed of further efforts and developments as we move forward jointly with the Wisconsin state officials and others to investigate the concerns raised in Wisconsin.

If you have any questions concerning this matter, please contact Mary T. Smith, Director, Field Operations and Support Division, at (202) 233-9000.

Sincerely,


Margo T. Oge
Director, Office of Mobile Sources

Enclosure

SENT BY: Xerox Telecopier 7021 : 2-21-85 : 3:40PM :

Attachment 2

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Thursday Evening, February 21, 1995

THE MILWAUKEE J

Waukesha Metro Edition

High-octane anger



An overflow crowd packed the Holiday Inn ballroom in downtown Milwaukee Monday evening for a public hearing with EPA officials. The

crowd voiced complaints and concerns about reformulated gasoline being sold in southeastern Wisconsin.

Southeastern Wisconsin residents give EPA an earful over new gas

By DON BISHOP
Special Services Editor

The US Environmental Protection Agency is unable to explain why new gasoline blends sold in southeastern Wisconsin under a federal mandate are generally 10 cents to 17 cents more expensive than conventional fuels.

"In the other areas of the country where the reformulated gasoline is being sold, we are seeing price differences of 1 to 3 cents per gallon," says Margaret Oge, director of the EPA's Office of Mobile Sources, or vehicle

distribution programs. One legislator believes the price difference is so large that explanation should be mandatory.

Rep. Marc Duff (R-New Berlin), chairman of the Assembly Environmental Resources Committee, said Tuesday that he



Gary Swales and his wife, Ruthann, of Waukesha, tell EPA officials they think reformulated gas damaged the engine in their Ford Bronco.

would ask state consumer protection officials to investigate the unusually high prices here. Facing more than 300 people at a public meeting Monday night in a downtown Milwaukee hotel, the EPA's Oge stopped short of calling for an investigation, however.

But many of the local residents attending the hearing

did not blunt their anger with the agency responsible for enforcing the use of the new fuels in Milwaukee, Chicago and seven other metropolitan areas.

All of the new blends have fewer leaded, such as benzene, and additional oxygen to ensure they burn cleaner, according to Oge.

Gas choices

Major Milwaukee gas service stations sell three types of reformulated gasoline. Federal officials have encouraged consumers with complaints about one blend to try a different one.

Standard-Market made from corn
MTW - (Midway Valley Valley Valley)
Other derived from natural gas
MTW - (Midway Valley Valley Valley)
Other derived from ethanol

Grade	Cost	Gas
REGULAR	Regular	Standard
PREMIUM	Midway	Standard
MTW	At 3 gallons	Standard
GLASS	At 3 gallons	Standard
MTW	At 3 gallons	Standard
REGULAR	Regular	Standard
PREMIUM	Midway	Standard
MTW	At 3 gallons	Standard
GLASS	At 3 gallons	Standard
MTW	At 3 gallons	Standard

*Substantially different in March

we've had," shouted Don Croyle, of Waukesha County.

"Take your hand off my back and out of my wallet," he said. A thunderous round of applause

Gas/Angry residents give EPA an earful over new gas

From page 1

greeted his comments.

Ogc and other officials also expressed surprise at the growing number of public complaints from area residents about loss of gas mileage in vehicles using the so-called reformulated gasoline blends.

"On a national level we are finding only a 3% to 4% loss in fuel efficiency" and not the 15% to 20% loss in mileage reported by hundreds of residents in six southeastern Wisconsin counties, Ogc said. The new fuels have been required since Jan. 1 in Milwaukee, Kenosha, Racine, Waukesha, Washington and Ozaukee Counties.

STATION'S SALES DOWN 48%

According to Russ Chapman, complaints of poor gas mileage and fears of possible engine damage are killing his business. Chapman owns an Amoco service station on Highway 67 in Eagle. Most of his regular customers have deserted him because his Waukesha County business is just a few miles from Jefferson and Walworth Counties, where conventional gasoline still is sold, Chapman said at the meeting.

"Price is not the issue. We've dropped our price to within 2 cents a gallon of the others," he said. "The people are saying they won't buy the reformulated gasoline."

By last week, his station's gasoline sales had plummeted 45% compared with one year ago, and Chapman predicted the business would close within three months.

By 6:45 p.m. Monday, a full 15 minutes before the meeting's announced starting time, more than 300 people had jammed a meeting room inside the Holiday Inn-City Centre at 611 W. Wisconsin Ave. Entrance down to the rooms were closed, and within 15 minutes another 300 people had been turned away, according to hotel staff and Milwaukee police officers at the scene. Many of the people denied access stayed in the halls and hotel lobby and shouted their disapproval of the small meeting space.

The EPA had scheduled the meeting at Gov. Tommy G. Thompson's request. Nearly two weeks ago, Thompson and other public officials had asked EPA Administrator Carol Browner to suspend sales of all reformulated gasolines in southeastern Wisconsin until the agency could investigate local complaints.

Browner told Thompson last week she would delay a decision on the suspension until after the public meeting.

RESEARCHERS TO STAY IN AREA

Ogc, the highest-ranking EPA official at the meeting, said a team of researchers would remain in the area at least this week to review complaints of illness, poor engine performance and high prices.

Local citizens can contact them at the Department of Natural Resources office building in Milwaukee, at 263-8500, or by calling the EPA's gasoline hot line, (800) 621-8431.

Duff's Environmental Resources Committee also was scheduled to hold a public hearing on reformulated gasoline Tuesday at the state Capitol. Ogc said she and other EPA representatives would attend the hearing.

Beginning Wednesday, health officials will call people who had complained this month to state and federal agencies, according to Henry Anderson, an epidemiologist with the Division of Health in Madison. Those concerns will be summarized in a report to be released as soon as possible, Anderson said.

HEALTH SURVEY SCHEDULED

Also Wednesday, state health officials are to begin a survey of Wisconsin residents to compare the health complaints of people in the six-county area with those of citizens living in counties selling conventional gasoline blends.

The study will focus on all of the reformulated blends available on the local market, officials said. They include methyl tertiary butyl ether, known as MTBE; ethanol, an alcohol made from corn; and ETBE, or ethyl tertiary butyl ether, which is derived from ethanol and other sources.

MTBE is a byproduct of natural gas production but it is not contained in the natural gas sold on the market for home heating or vehicle fuel. This compound has been used in conventional gasoline blends since 1979 and in some of the so-called reformulated blends used in Denver beginning in 1988.

However, there were only about 100 complaints from Denver-area residents, according to the EPA's Ogc.

Use of MTBE and other reformulated blends was mandated in nearly 40 additional cities in November 1992. Though many complaints arose in Anchorage, Alaska, at the time, no health studies could find a link between any of the health complaints and exposure to MTBE, according to Ogc. One EPA study even used human volunteers who inhaled pure MTBE, but no ill health effects were found, officials said.

One Milwaukee woman said she didn't believe them. Mary Galinowski, of Bay View, said rashes, nausea and bronchial problems were among the health problems she has experienced since using reformulated gasoline earlier this year. She blamed MTBE for the illnesses.

When she shouted, "It must be stopped now," the majority of people in the room applauded.

As part of the state-sponsored study beginning this week, the DNR expected to begin monitoring Tuesday at several sites in the Milwaukee area to determine whether any of the compounds

are accumulating to unexpectedly high levels, according to Don Theller, the DNR's director of air-management programs. The information will help researchers understand how much of the compounds people are exposed to in parking ramps, service stations or busy intersections.

At Monday's meeting, Theller and US Rep. F. James Sensenbrenner (R-Wis.) joined several other public officials in calling for the EPA to immediately suspend sales of all reformulated gasoline blends in southeastern Wisconsin until April 1. They must be used here after that date to comply with federal mandates to reduce emissions of chemicals that cause ozone pollution in summer, according to Theller.

Since the meeting was announced late last week, local radio talk show hosts had exhorted listeners to attend the forum and complain about this mandate.

Again, on Monday, WTMJ (620 AM) commentator Charles Sykes said it was important for local residents to express their opinions.

FEBRUARY 21, 1985

★ ★ ★ FINAL

Big crowd rips EPA gas rule

400 angry residents turn out to challenge reformulated fuel

By ELDON KNOCKE
General staff writer

A boisterous and emotional crowd of more than 300 Monday bled and shouted at U.S. Environmental Protection Agency officials explaining the federal government's requirement that reformulated gas be sold in southeastern Wisconsin.

Another 100 or more residents

stood in a hallway outside the meeting room at the Holiday Inn Milwaukee City Center, 811 W. Wisconsin Ave., angry that there was no room for them inside.

"Who's going to pay for the engine?" asked Calvin Shields, of Waukegan, who told a panel of EPA and state officials the more they raised the V-8 engine in his 1979 Buick.

Shields said his mechanic told him the newer fuel had caused \$1,800 in damage.

"Don't mess with my air," said Donald J. Croydale, of Elm Grove. "Don't mess with my car."

Croydale, executive director of the Milwaukee Printing & Decorating Contractors, was, as many speakers, cheered and applauded loudly when he made

statements challenging the EPA. "I'm happy with the air that we have," he said, claiming southeastern Wisconsin had had only nine "bad air" days in the past four years.

Standing at one of the six microphones set up for the crowd, Croydale answered his own question of whether the area has an ozone problem.

"Nonsense," he said. "The difference between the worst and the best (air quality attainment areas) is almost infinitesimal."

Croydale warned that if anyone thought the new gas was causing problems now they should just "wait until summer."

He said cars would be unable to pass the vehicle emissions test

See Gas / 7A

Gas

From 1A

without spending \$400 for repairs. That, he said, is "a lot of money to make some bureaucrat happy."

When Margo Oge, director of the Office of Mobile Sources for EPA in Washington, attempted to answer questions from the audience, she was frequently met with cat calls.

Rep. Thomas M. Barrett (D-Wis.), who directed the meeting, repeatedly asked the crowd to "please respect each other, be polite to each other."

As of Jan. 1, the EPA required that reformulated gas be sold in Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha counties because the area does not meet the federal ozone pollution standards.

The State Department of Natural Resources has said the gas must be sold in Sheboygan, Manitowish and Kewaunee counties beginning June 1.

State and federal officials have received thousands of calls from people blaming the gas for headaches, dizziness, eye irritation and rashes. Many other motorists have complained that gas mileage has dropped, and some claim they have encountered maintenance problems because of the new gas.

Gov. Tommy G. Thompson has asked EPA Administrator Carol Browner to suspend the federal Clean Air Act requirement until April 1.

Wisconsin's U.S. senators, Herbert H. Kohl and Russell D. Feingold, both Democrats, also have asked for suspension of formulated gas sales until after health officials investigate.

Last week, Thompson directed the State Division of Health to begin its own study of the health effects of reformulated gasoline.

Reformulated gas uses an ether additive, made from natural gas, or an ethanol additive, made from corn, to increase the oxygen content and make the fuel burn cleaner. The ether blends contain methyl tertiary butyl ether or ethyl tertiary butyl ether.

During the hearing, most in the room appeared surprised when Oge said the state had the power to ban any one of the three types of oxygenated fuels. Oge told a cheering crowd that the state had the authority to require ethanol or a different additive.

State Rep. Mary Panzer (R-West Bend) said the Legislature has been working on a bill but she was under the impression the EPA had to approve the ban. Oge said that was not correct.

Many of the health complaints at Monday's hearing dealt with the blend that contains methyl tertiary butyl ether. According to Oge, the state would have the authority to ban that particular mix.

Panzer said outside the meeting that the state had not been pushing for the ban of one blend over another as hard as it is negotiating for the suspension of the entire program.

The other EPA officials attending Monday's hearing were: toxicologist William Farland; Director of Field Operations and Support Mary Smith; and Steven Cochran, an assistant to Browner.

Also attempting to answer questions were Donald Thiel, director of the DNR Bureau of Air Management, and Henry Anderson, chief medical officer for the State Department of Health and Human Services.

Rep. F. James Sensenbrenner Jr. (R-Wis.) received loud applause Monday night as he spoke against the EPA requirement and told of complaints of illness, low gas mileage and damage to small engines.

He showed the crowd a damaged piston which he said was given to him by a constituent who had to spend \$350 to repair a snowmobile engine. At one point, attempting to stop long applause the congressman pounded the piston on the podium in front of him.

Oge, who said she was responsible for the reformulated gas program, said the EPA officials would stay at Monday night's hearing as long as necessary.

"Please, please let me finish," she said, explaining that the EPA was concerned about the problems in Milwaukee.

Thiel said his agency would begin random health surveys Tuesday and the DNR would begin monitoring the air at selected service stations, parking lots around the Bradley Center and residential streets and freeways.

Oge was also greeted by yelling when she said the EPA was surprised to find gas prices had increased up to 10 cents per gallon in Milwaukee, saying the hike was three to five cents in the rest of the country.

She said the EPA will also undertake a study of area fuel efficiency beginning Tuesday.

Attachment 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 24 1995

THE ADMINISTRATOR

The Honorable T amy G. Thompson
Governor
State of Wisconsin
Madison, WI 53707

Dear Governor Thompson:

Reformulated gasoline is one of the most cost effective programs ever created to reduce harmful air pollution. Over eighty million people now enjoy its health and environmental benefits, including reductions in smog, carbon monoxide pollution and exposure to toxic chemicals such as benzene. I know that you share my commitment to providing the benefits of this cleaner gasoline to the people of Wisconsin.

Despite the success of this program across the country, some Milwaukee residents have registered complaints about the use of reformulated gasoline. It is possible that unique conditions in the area, including fuel quality and weather patterns, may account for concerns being raised about headaches and other health effects, vehicle performance problems and reduced gas mileage associated with the use of oxygenate additives. As Administrator of the Environmental Protection Agency, I take these concerns very seriously and will continue to work with the State of Wisconsin, its Congressional delegation and the fuels industry to fully investigate and promptly resolve these issues.

I take seriously your request to suspend the reformulated gasoline program until April 1, 1995. I have discussed with the fuels industry the potential effectiveness of a suspension. Industry leaders have stated that given the large amount of gasoline with the oxygenate additive already in the distribution system, they would not be able to suspend its sale without substantial price increases and disruption of supply. Therefore, I believe that a suspension would not be adequate at this time to address the concerns of the citizens of Milwaukee.

Thus, in an effort to respond expeditiously to the people of Milwaukee, I am today taking the following actions:

First, I have called on the oil industry to work with their suppliers to immediately provide clearly visible gasoline pump labels that give the public the facts necessary to make informed individual choices about oxygenate additives and which gasoline to use.

Second, I have called on and will work with the oil industry to provide an alternate choice of gasoline at limited locations in Milwaukee while we complete our investigation and respond to all of the concerns that have been raised.

Third, EPA will provide financial support for and participate with the Wisconsin Department of Health and Social Services and the Centers for Disease Control and Prevention in an evaluation of all

health complaints related to the use of oxygenated additives received from Milwaukee area residents. In addition, I have called on the Health Effects Institute, a leading independent health research organization, to conduct a review of all existing data on health effects related to the use of the oxygenated fuel additives.

Fourth, EPA will work jointly with state and local agencies to investigate possible reduced fuel efficiency due to the use of oxygenated additives. The investigation will include analysis using Wisconsin vehicles in actual road tests. We will complete this investigation within 90 days.

Fifth, EPA will ask that the petroleum industry respond to public concern over any potential link between the use of oxygenated additives and decreased engine performance by establishing a toll-free number to answer inquiries about engine performance; sponsor workshops for mechanics in the Milwaukee area; and establish convenient assistance centers for individuals with motor vehicle performance or small engine concerns.

Sixth, EPA will expedite analysis of recent random retail fuel samples taken in Milwaukee. EPA will continue to closely monitor fuel quality in the area. As part of our investigation of consumer complaints, we are examining information received regarding location, quantity and grade of gasoline purchased to determine if there is any pattern.

Finally, EPA has formally requested that the Antitrust Division of the United States Department of Justice investigate fuel price increases experienced in the Milwaukee area above those found elsewhere since the introduction of reformulated gasoline.

I look forward to continuing our efforts with Wisconsin to ensure that the people of Milwaukee receive all of the benefits of our common efforts to reduce air pollution and fully protect the public health.

Sincerely,



Carol M. Browner

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